

April 1, 2024

Re: PA SERS Request for Information – Proxy Voting Consulting Services for the Defined Benefit Plan

Dear Potential Respondent:

The Commonwealth of Pennsylvania State Employees' Retirement System ("SERS"), a \$36.4 billion public pension plan as of year-end 2023, seeks to hire a proxy voting consultant for the period beginning February 14, 2025, through February 13, 2030, for the State Employees' Retirement Board's (the "Board") Defined Benefit Plan. SERS extends an invitation to your firm to respond with information for consideration by Board in connection with its desire for proxy voting consulting services for the Defined Benefit Plan's investment portfolio. Details regarding the proxy voting consulting services being sought are in Section I of the attached Request for Information ("RFI").

All responses must be submitted electronically to SERS by 5:00 PM Eastern Time on Wednesday, May 15, 2024. Please forward all responses in PDF format to Meredith Jones at merjones@pa.gov. Submissions must be no larger than 10MB and cannot be submitted as .exe or .zip files. If submissions are too large, or consist of non-compliant file types, SERS' firewall will automatically reject them. If needed, more than one email may be sent to SERS to complete a submission. If sending more than one email, clearly indicate how many emails in total encompass the submission. Please be sure to answer the Master Due Diligence Questionnaire featured as Attachment 1. Any submission that is deemed incomplete will be disqualified from consideration at SERS' discretion.

After submissions have been received and reviewed by SERS, certain responding firms may be invited, at SERS' sole discretion, to meet with the SERS Investment Office.

Following these meetings, certain firms may be selected to make a presentation to the Board's Investment Committee at its July 23, 2024, meeting that is expected to be held virtually. All Board and Investment Committee meetings are livestreamed to the public. SERS will provide advance notice of the approximate time of each selected firm's scheduled presentation to the Investment Committee. Selected firms will be given approximately 20 minutes to make their presentation, leaving an additional 10 minutes to answer any questions the Investment Committee may have. In preparation for the meeting, selected firms will need to

provide SERS with a PDF document of their presentation materials at least three weeks in advance of the Investment Committee meeting. The presentations will then be distributed to the Board and SERS staff in advance of the meeting for their review and consideration. The timeline below provides a summary of this RFI process:

Event	Date
RFI issued to select group of firms and posted to SERS website	April 1, 2024
RFI response due date	May 15, 2024
SERS' Investment Office staff to review responses, complete due diligence	May - June, 2024
SERS' Investment Committee reviews candidate proposals	July 23, 2024
SERS' Board approves hiring of consultant	September 24, 2024
Contract negotiations	October - November 2024*
Office of Attorney General Review	December 2024*
Projected date of contract commencement	January 2025**
End of current ISS contract	February 14, 2025

*An estimated timeframe for completion of contract negotiations and to obtain all required Commonwealth legal approvals.

**If the Board hires a new firm, an estimated period of transition will be required prior to the termination of the current contract.

Please confirm receipt of this invitation and whether your firm intends to submit a response to this RFI to provide information on the services your firm could potentially provide SERS in connection therewith. If you have any questions during this process, please feel free to contact Meredith Jones at merjones@pa.gov.

Regards,

James Nolan
Chief Investment Officer
Pennsylvania State Employees' Retirement System
30 North 3rd Street, Suite 150
Harrisburg, PA 17101
P: 717.787.9008 | F: 717.772.3741
www.SERS.pa.gov

**COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT SYSTEM**

REQUEST FOR INFORMATION - PROXY VOTING CONSULTING SERVICES

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SECTION I: SERVICE REQUEST – PROXY VOTING CONSULTING SERVICES

A. General

The purpose of this Request for Information is to solicit proposals from qualified firms to provide fiduciary proxy voting services. These services include but are not limited to: 1) Proxy Policy Review and Development – proxy voting guideline review and consulting services to assist SERS with the development of SERS' proxy voting policy; 2) Proxy Research, Voting, and Reporting – proxy research, analysis, recommendation, and voting services; and reporting; and 3) General Services.

B. Specific Scope of Work

1. Proxy Voting Guideline Review and Development

- a) Propose and work with SERS to optimize a proxy voting strategy and policy that is consistent with fiduciary responsibilities and seeks to enhance long-term shareowner value.
- b) Review and discuss SERS's existing proxy voting guidelines/policies and ascertain the appropriateness of the current policy for SERS in the current and ongoing corporate governance landscape. For reference, please review [SERS U.S. & International Proxy Voting Policy](#).
- c) Provide proxy guideline review services and recommend amendments to SERS' proxy policy, as necessary after adoption.
- d) Provide updates and education to Trustees and staff on relevant issues and other non-routine matters that relate to proxy voting and corporate governance.

2. Proxy Research, Voting and Reporting

- a) Manage, as a fiduciary, SERS' global proxy voting activity and execute required votes on SERS' behalf as directed by the Board in accordance with the proxy voting guidelines or policy adopted by SERS. Monitor annual meeting schedules and agendas, and receive, open, and document all physical and electronic proxy voting ballots and voting instruction forms.
- b) Track and monitor the holdings of SERS' global equity portfolios and obtain required proxy voting information from SERS' custodian. Reconcile with the custodian any discrepancies, including but not limited to holdings, ballots, numbers of shares held, proxies to be voted.
- c) Coordinate with SERS' custodians and external advisors on administrative issues including but not limited to Proxy Voting Power of Attorney, new account set-up and maintenance, and holdings reports.
- d) Keep SERS informed of proxy voting and corporate governance changes and developments and provide SERS with regular access to any annual meetings, conference calls, and/or web casts that

might provide timely information on specific issues of concern regarding proxies and corporate governance. Prepare and assist in the preparation of reports on proxy voting and corporate governance issues.

- e) Provide comprehensive reporting services for global proxy votes received. Record all votes against management, votes with management, and votes withheld. Provide record keeping and maintain detailed records of all recommended and actual votes, analysis and special instructions.
- f) Maintain SERS' Voting and Disclosure website with up-to-date information keeping our constituents informed of SERS' current Proxy Voting Policy as well as votes cast. Please see SERS website for an example of the current data being presented <https://www.sers.pa.gov/Investments-proxy.html?CustomerID=102>.
- g) Post implementation review with Investment Office staff after proxy voting changes are implemented into the consultant's voting system.
- h) Quarterly review with Investment Office staff.

3. General Services

- a) Provide a designated person (team) within the organization to serve as a liaison to the SERS account.
- b) Be available to present to the SERS Investment Committee and/or Board as needed.
- c) Assist SERS staff in the preparation of responses to questions proposed by constituents on proxy voting and corporate governance issues.

Historical data listed below is for illustrative purposes intended to be representative of the volume of ballots/meetings/proposals reviewed and processed by the current provider.

	U.S. Meetings	Global Meetings	U.S. Ballots	Global Ballots	U.S. Proposals	Global Proposals	Accounts
2019	2,932	485	6,653	697	24,968	5,209	35
2020	2,867	441	4,371	537	25,100	4,500	18
2021	3,020	410	4,645	498	25,784	4,241	20
2022	2,946	404	4,519	485	25,576	4,466	20
2023	2,852	401	4,340	492	26,848	4,632	20

SECTION II: RESPONSE REQUIREMENTS FOR PROXY VOTING CONSULTING SERVICES

A. Minimum Qualifications

The responder must address each of the qualifications substantiating how the responder satisfies each of the minimum qualifications. The responses must contain sufficient information as prescribed to assure SERS of its accuracy.

1. Must have been in the business of providing proxy research services for at least five (5) years, evidenced by a certificate of incorporation or copy of Form ADV as well as documentation of proxy research services dating back a minimum of five (5) years.
2. The responder should be a Registered Investment Adviser with the SEC under the Investment Advisers Act of 1940. Please provide a copy of the firm's latest Form ADV Part II.
3. The primary contact(s) for SERS' account and the head of domestic and global research must have at least five (5) years of experience directly related to those duties.
4. The responder should have as of December 31, 2023, at least three (3) other large institutional investor clients, each of which has at least \$5 billion under management with the same type of services.
5. The responder's key professionals and/or organization must not have material conflicts of interest with the SERS Board or its investment managers.
6. The responder must be willing to enter into a most favored nation clause certifying that the fees, costs, or pricing charged to SERS do not exceed the fees, costs, or pricing charged by the responder to any of its clients for the same or similar level of services.

B. Background and Description

1. Give a brief history of the firm including:
 - a) The year the organization was started, and the number of years your firm has been providing proxy services to institutional investors and, specifically, to public pension fund clients. Please identify when each type of service became available to clients.
 - b) The location of your firm's office(s) and the primary location from which the relationship will be serviced.
2. Describe the ownership of the firm, including, but not limited to, the ownership structure, affiliated companies, and joint ventures, if any. If an affiliate, designate the percentage of parent firm's total revenue generated by your organization. If the firm is a joint venture partner, identify

the percentage of ownership and revenues recognized by each partner to the combined association.

3. Provide an organizational chart diagramming the relationships among the professional staff, as well as any parent-subsiary, affiliate, or joint venture entities.
4. Describe any significant developments in the firm's basic ownership structure or any other significant changes in the organization (changes in ownership, personnel reorganizations, etc.) in the last five (5) years.
5. Describe any anticipated changes in the firm's basic ownership structure or any other significant changes in the organization.
6. Describe the levels (U.S. dollar amounts) of coverage and deductibles for errors and omissions coverage and any other fiduciary or professional liability coverage that your firm carries. List the insurance carriers supplying the coverage. If selected, proof of insurance will be required in an amount to be negotiated.
7. Over the past five (5) years, has your organization or any of its affiliates or parent, or any officer, principal, or primary contacts been involved in any litigation relating to fiduciary duties, securities or tax law violation investigations or proceedings, other legal proceedings between an officer or principal and the firm, or in any government investigations? If so, provide a detailed explanation and indicate the current status.
8. Describe in detail any potential conflicts of interest your firm may have in the management of this account. Does your firm or any affiliate provide services to clients other than institutional shareholders? Does the firm provide non-proxy services to any clients? Are there contractual or business relationships with publicly traded companies? Please describe any such services and relationships and identify the amount and percentage of income and profit associated with them. How are conflicts of interest managed, disclosed, or prevented? Include any other pertinent activities, actions, or relationships not specifically outlined in this question. Does your firm have a conflict of interest/ethics policy? If so, please provide a copy.
9. Does the firm accept soft dollars as payment for services? If so, please explain why.
10. Does your firm have a business continuation and disaster recovery plan, including cybersecurity? Please describe the key features of the plan.
11. Has your firm adopted the Principles for Responsible Investment? If so, when? If not, has there been any discussion regarding the Principles? If so, what were the key issues or concerns surrounding the PRI? Please advise if your firm has adopted another set of principles or has developed customized principles which guide its business practices.
12. Please list any professional organizations of which your firm is a member.

13. Describe your firm's overall business strengths, weaknesses, and uniqueness. Please provide any political and/or charitable organizations contributions, as well as any relationships with SERS Board and Staff.

C. Client Coverage and References

1. Please indicate the composition of your firm's client base using the number and percentages of clients (see table below). Please explain if your firm's client base is heavily weighted to any particular type of investor.

Client Type	Number	Percentage
Tax Exempt Investors		
Public Pension/Retirement Funds		
Corporate Pension/Retirement Funds		
Endowments and Foundations		
Taft-Hartley Funds		
Other (Specify)		
Non-Tax Exempt		
Investment Managers, Mutual Fund Complex, CITs		
Insurance Funds		
Others (Specify)		
TOTAL		100%

2. List all clients gained in the proxy research and voting services area since January 1, 2020.
3. List all clients lost in the proxy research and voting services area since January 1, 2020. If you have lost a client(s), identify that client, and if applicable a second former client, over the past three (3) years that can be contacted as references. Provide the firm name, contact person and title, telephone number, and reason for termination.
4. Describe the objectives of your firm with respect to future growth, commenting on new products or services, and additional resources.

5. Provide a current list of the three (3) largest clients for proxy research and voting services in your proposal that SERS can contact as client references. For each reference, include the client name, address, phone number, contact name, title, account type (e.g., defined benefit, defined contribution, endowment), the product or service the client uses, and the length of your relationship.

D. Personnel

1. Please provide an organizational chart showing all areas that will be involved in servicing SERS. Provide a brief description of each area's functional responsibilities.
2. How many people are employed by the firm? How many people would support this relationship? Please include a brief resume of the officers, directors, principals, key individuals, service segment supervisors, and person(s) you propose to be primary contact(s) or primary individuals responsible for the services to SERS. Include the locations and number of accounts each manages. Please also include length of experience in providing those services and any specialty expertise they possess, and the highest educational degree they have attained. In addition, please provide below the details for the relationship back-up contact.

Name	Office Location	Title	Responsibilities	Year Started in the Industry	Year Started with the Firm	Education and Degree	Percentage of Firm Ownership

3. What would be the most distinct element of your firm's client servicing and delivery approach that SERS would benefit from?
4. How do you propose to assign staff given SERS' requirements and investment structure? What is the typical client load of a client team? What is the staff turnover over the last three years of the client team to be assigned to SERS? How do you manage the client service team turnover and how does this process minimize the impact on SERS?

E. Proxy Policy Development Services

1. Describe in detail the proxy policy review and development services that you propose to provide SERS. Explain what your firm's competitive advantage would be for providing those services to SERS. Describe what differentiates your services from your competition.
2. Please provide a copy of the standard proxy voting guidelines and policies recommended by your firm. How are voting decisions made when an issue is not expressly covered by the proxy voting guidelines in force?
3. What are the primary issues and activities on which you believe institutional investor corporate governance activities should focus? Why?

F. Proxy Vote Reporting Services

1. Describe in detail the global proxy voting reporting services you propose to provide to SERS. How frequently are reports made available? Please include an example of a domestic and non-U.S. equity proxy vote report.
2. Discuss your firm's capability to provide and support a web-based reporting platform that would enable disclosure of individual proxy votes, categorized by issuer and meeting date, on a post-meeting basis.
3. Discuss your firm's capability to provide and support a web-based reporting platform that would enable advance disclosure of individual proxy votes categorized by issuer and meeting date.
4. Please provide a description of your firm's experience, process, procedures, and information technology capabilities for monitoring, reporting, and documenting records for proxies. Please indicate if any clients use BNY Mellon as a custodian.

G. Proxy Voting Services

1. Describe in detail the proxy voting services you propose to provide to SERS.
2. Please provide a description of your firm's experience, process, procedures, and information technology capabilities for monitoring, researching, analyzing, recommending, and voting proxies.
3. Please provide your firm's analysis of whether the practice of exercising shareowner rights will have an effect on the economic value of SERS' investments that outweighs the cost of exercising such rights.
4. Please discuss your firm's ability and willingness when requested by SERS to conduct engagements with issuers and/or shareowners regarding proxy matters.

5. Does your firm have the flexibility to accommodate special requests and case-by-case recommendations?
6. How do you handle recommendations on proxy disputes, shareowner proposals, securities out on loan, class actions and other special situations? What are the procedures and restrictions associated with recalling shares on loan for voting purposes?
7. Is your firm familiar with Council of Institutional Investors' regarding corporate governance and proxy voting principles? If so, how do you incorporate the principles within the context of what is consistent and appropriate for SERS?
8. Kindly describe how you incorporate ESG (Environmental, Social and Governance) in developing proxy voting guidelines for a client such as SERS. Are there specific metrics or default principles that you apply and we should know about?
9. Identify any circumstances where you would not be able to vote on SERS's behalf. Please include information on how you handle commingled accounts, preferred stock, warrants, or debt holdings.

SECTION III: RESPONSE REQUIREMENTS FOR FEE SUBMISSION

Provide a separate fee response for each of the requested services, as applicable, in the following format as a total, firm, fixed fee per year:

PROXY VOTING CONSULTING SERVICES

<u>Period</u>	<u>Fee (USD)</u>
2/14/25 – 2/13/26	\$
2/14/26 – 2/13/27	\$
2/14/27 – 2/13/28	\$
2/14/28 – 2/13/29	\$
2/14/29 – 2/13/30	\$
Total for 5 years	\$

SECTION IV: GENERAL INFORMATION

SERS reserves the right to disregard any response, in its sole and absolute discretion, in selecting a firm to perform any of the requested services. Such selection is NOT subject to or governed by any competitive bidding process, including but not limited to an IFB or RFP, pursuant to the

Commonwealth Procurement Code or the Pennsylvania Department of General Services Procurement Handbook.

Do not label responses as confidential or proprietary. SERS will hold all responses in confidence and will not reveal or discuss any response with others, unless disclosure is required:

- Under the provisions of any Commonwealth or United States federal statute or regulation; or
- By rule or order of any court of competent jurisdiction.

After a contract is executed, however, the contract and the successful responder's submission in response to this RFI are considered public records subject to disclosure under the Pennsylvania Right-to Know Law, 65 P.S. § 66.1—66.9, subject to the Commonwealth Procurement Code, 62 Pa. C.S. § 106, or any available exemption from disclosure. All materials submitted with the response to this RFI becomes the property of SERS and/or the Commonwealth of Pennsylvania.

Your firm shall not issue news releases, Internet postings, advertisements, or any other public communications pertaining to this RFI or its response thereto without prior written approval of SERS, and then only in coordination with SERS.

The Commonwealth of Pennsylvania and SERS are not liable for any costs your firm incurs in the preparation and submission of its response to this RFI.

SECTION V: 2022 ANNUAL COMPREHENSIVE FINANCIAL REPORT

Please find the SERS Annual Comprehensive Financial Report at the link [here](#).

SECTION VI: INVESTMENT POLICY STATEMENT AND SERS U.S. & INTERNATIONAL PROXY VOTING POLICY

Please find the SERS Investment Policy Statement at the link [here](#).

Please find the SERS U.S. & International Proxy Voting Policy at the link [here](#):

SECTION VII: RESPONSE REQUIREMENT FOR MASTER DUE DILIGENCE QUESTIONNAIRE

Please be sure to answer the Master Due Diligence Questionnaire featured as Attachment I. Any submission that is deemed incomplete will be disqualified from consideration at SERS' discretion.

SECTION VIII: RESPONSE REQUIREMENT FOR FORM OF STANDARD CONTRACT

Identify any material terms that your firm desires to revise in, delete from, or add to the form of Standard Contract that is attached to this RFI as Attachment II. Failure to so identify such material terms in your firm's response to this RFI shall constitute a waiver of any right to do so at a later time. SERS, in its sole and absolute discretion, may reject any and all requests to revise or delete the terms of, or add terms to, the attached form of Standard Contract (**Attachment II**).

ATTACHMENT I: MASTER DUE DILIGENCE QUESTIONNAIRE



Commonwealth of Pennsylvania
State Employees' Retirement System ("SERS")

Master Consultant Due Diligence Questionnaire

Firm Name:

Date DDQ Completed:

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2.	Firm and People Questionnaire
3.	Diversity and Inclusion Questionnaire
4.	Operational Controls and Compliance Questionnaire
5.	Related Party Issues Questionnaire
6.	Marketing/Client Service Questionnaire
7.	CFA Institute Asset Manager Code Questionnaire
8.	Key Persons Definition
9.	Information Regarding Other Business Interests Form
10.	Litigation Information Form
11.	Rule 206(4)-5 (Pay-to-Play) Certification
12.	Reporting Political Contributions Certification
13.	Placement Agent Disclosure Certification
14.	Indirect Compensation Certification
15.	Pennsylvania-Based Investments Information Acknowledgment
16.	Scrutinized Business Activities Certification
17.	Divestment of Russia-Related and Belarus-Related Assets Acknowledgment
Appendix A	Team Diversity Template

1. ACCURACY AND COMPLETENESS OF INFORMATION CERTIFICATION

All information furnished by or on behalf of the Firm relating to this Due Diligence Questionnaire is true and complete in all material respects on the date as of which such information is dated and does not omit any material fact necessary in order to make such information not misleading.

The undersigned has authority to certify the above statements on behalf of [name of Firm].

Signature: _____

Date: _____

Printed Name _____

2. FIRM AND PEOPLE QUESTIONNAIRE

- a. Provide the legal name and the legal structure of firm/entity being proposed to SERS. What is the expected or current legal jurisdiction of the entity?
- b. Provide a short history of the Firm, highlighting any important milestones or changes in ownership including the date of Firm formation and the jurisdiction in which it was formed.
- c. Describe the ownership structure of the managing entity (including percentage ownership by employees and any affiliates).
- d. Provide the names of the senior individuals charged with managing the operations of the Firm, along with a brief biography for each that includes Firm experience, industry experience, education, and current duties.
- e. Is the Firm currently involved in any litigation? If yes, please describe. Has the Firm been involved in any litigation within the past five (5) years? If yes, please describe.
- f. List the different departments at the Firm and the number of professionals dedicated to each. Are there any departments that are currently being increased or decreased in size? Provide a current, and if applicable, proposed organizational chart.
- g. Provide a chart or list describing the relationships between and among the other entities with which the Firm is affiliated.
- h. List all expected turnover (departures, retirements or otherwise) among partners or senior consultant professionals of the Firm. Provide contact information for such individuals.
- i. List the Firm's partner and/or senior investment professional-level departures within the last five (5) years, citing reasons for each departure and contacts for individuals, if known.
- j. Are there any personnel or product additions planned within the next three (3) years? If so, briefly describe each planned addition.
- k. What are the total assets under advisement for the Firm (by asset class if applicable)?
- l. Discuss succession planning at your Firm and/or organization.
- m. Does the Firm currently consult for other U.S. state pension plans? If so, to the extent permitted without violating confidentiality, provide the names of these clients. Provide at least three (3) client, including:
 - i. Name of organization
 - ii. Address of organization
 - iii. Name of contact, telephone number and E-mail address

3. DIVERSITY AND INCLUSION QUESTIONNAIRE

- a. Is the Firm a signatory to the Institutional Limited Partners Association (“ILPA”) *Diversity in Action* Initiative?
- b. If the Firm is not a signatory to the ILPA *Diversity in Action* Initiative, please describe how the Firm incorporates the Foundational Required Activities listed in the ILPA *Diversity in Action* Framework?
- c. Does the Firm have a Diversity, Equity and Inclusion policy? If so, please provide.
- d. Does the Firm have a formal mentorship program? If so, please provide.
 - i. Does this formal mentorship program have a specific focus for minorities and/or women?
- e. How does the Firm recruit and maintain women and minorities?
 - i. Does the Firm work with organizations that promote the attraction and retention of women and minorities?
 - ii. Please provide a list of these organizations, as well as any additional programs the Firm has embraced.
- f. Please provide the Firm’s Code of Conduct.
 - i. Please provide the page number of the Firm’s Code of Conduct that covers the following areas:
 1. Harassment
 2. Discrimination
 3. Workplace violence
 - ii. If the Firm does not have a Code of Conduct, please explain why.
- g. What are the Firm’s procedures for the reporting and investigation of harassment and/or discrimination?
- h. Please provide all claims of sexual or general harassment, misconduct or discrimination against any current or former Firm’s employees (while employed by the Firm) within the last five (5) years.
- i. What is the Firm’s Family Leave policy?
- j. Please complete the Team Diversity Template (attached hereto as Appendix A) to supplement the responses above.

4. OPERATIONAL CONTROLS AND COMPLIANCE QUESTIONNAIRE

- a. Does the Firm undergo the AICPA Accounting Standard Board's SSAE 18 – Reporting on Controls at a Service Organization or equivalent report (e.g., AT 101, SOC 1, SOC 2, ISAE 3402) for itself? If so, please provide the most current report.
 - i. If not, does it undergo another type of independent evaluation of the organization's internal controls or internal control structure, or elements of the organization's internal controls or internal control structure? If so, please provide the independent evaluation.
- b. Does the Firm utilize a sub-service organization that performs back-office functions such as general ledger accounting, record keeping, and calculation of management fees and carried interest?
 - i. If the Firm utilizes a sub-service organization that performs any back-office functions, does the sub-service organization have an AICPA Accounting Standard Board's SSAE 18 – Reporting on Controls at a Service Organization or equivalent report (e.g., AT 101, SOC 1, SOC 2, ISAE 3402) performed by an independent auditor? If so, please provide the most current report.
 - ii. If the sub-service organization does not undergo an above-referenced review performed by an independent auditor, is there another type of independent evaluation of the sub-service organization's internal controls or internal control structure, or elements of the sub-service organization's internal controls or internal control structure? If so, please provide the independent evaluation.
- c. Does the Firm have an internal audit and/or compliance function? If so, describe its structure and function. How does the Firm monitor compliance with client or Firm guidelines? How often does the Firm conduct reviews? Provide a copy of the policies and procedures.
- d. Describe and provide copies of the policies pertaining to the Firm's partners and/or other employees personally investing in the Firm's portfolio(s) or portfolio companies, if applicable.
- e. Describe any potential or actual conflicts of interest, and the controls in place to protect the interests of the clients with consulting contracts.
- f. Does the Firm have company-wide risk management functions or guidelines? If so, how are they updated or reviewed? How is compliance with these functions/guidelines implemented and/or monitored? Discuss the key metrics, reports and systems used in risk management. Provide a copy of any of the Firm's policies regarding risk management, if available.
- g. Does proper segregation of duties (e.g., authorization, disbursement, accounting, and reconciliation functions performed by separate parties) exist within the Firm's control structure? Explain.
- h. What types of reports are generated from the Firm's information systems to facilitate the monitoring of the assets? How frequently are they produced and distributed? Identify individuals who review documents prior to dissemination. Do financial statements follow GAAP accounting standards? Has your Firm's complied with the provisions of the Dodd-Frank Act? If so, provide its most recent SEC filing(s), including a copy of the Firm's most recent Forms ADV Part I and Part II.
- i. Is your Firm, or any of its managing partners, senior executives, principals, consulting employees (or related level positions) currently under investigation by a regulatory or oversight body (including but not limited to the SEC, U.S. DOL/DOJ, FINRA, or a state regulator)?

- i. Disclose any new investigations to SERS that occurred after the submission of this Due Diligence Questionnaire as soon as possible.**
- j. Has the Firm been the target of any investigation, found to have violated Section 206(4)-5 of the Investment Advisers Act of 1940, or Rules G-37 and G-38 of the Municipalities Securities Rulemaking Board? If yes, provide a detailed explanation of the investigation or violation.
- k. Provide a copy of the Firm's Code of Ethics. Who is the designated compliance officer that oversees implementation of the firm's ethics policy or process?
- l. Does the Firm require ethics and integrity training and/or certification? If so, provide a detailed explanation of what is required.
- m. Does the Firm carry insurance in the following areas (see list below)? If so, provide the amounts the Firm generally carries for public institutional clients, as well as copies of the actual certificates for the past calendar year. Additionally, specify any additional investment-related insurance coverage that the Firm may carry.
 - i. Fidelity Bond
 - ii. Errors and Omissions
 - iii. Directors and Officers (D&O) liability
- n. Discuss in detail the Firm's disaster recovery and business continuity plans. How often is it tested generally, and when was the last time it was tested?
- o. What is the name of the Firm's independent auditor? How are the Firm's auditors selected and how often does it change auditing firms? Does the independent auditor issue an opinion on the Firm's internal controls? If so, provide a copy.
- p. Provide the Firm's prior three years of audited financial statements, if applicable. If not available, explain why.
- q. Have there been any suspicious activity reports (SAR) filed with the Financial Crimes Enforcement Network (FinCEN), an agency of the United States Department of the Treasury, that are in any way related to the Firm, its individual principals/employees, and/or any of its affiliates regarding suspicious or potentially suspicious activity? If so, explain in detail the circumstances surrounding same.
- r. What is the Firm's cybersecurity plan?
- s. For reporting purposes, does your Firm currently use the ILPA template for any other Limited Partner? This is for private markets managers only.
- t. Does your Firm have any concerns about providing SERS with a completed, standard ILPA template (using the Excel file provided by SERS) on a quarterly basis? This is for private markets managers only.
- u. Does your firm employ Enterprise Risk Management Principals or something similar?
- v. Does your firm monitor its social media presence?

- w. Please provide to SERS the links or PDFs of any negative and/or significant media coverage (including print, online, broadcast, podcasts and social media) sustained by your firm in the last 24 months.
 - i. Please add any details your firm feels is necessary to explain and/or mitigate the media coverage.

- x. If your firm is a private equity firm, please also provide to SERS the links or PDFs of any negative and/or significant media coverage (including print, online, broadcast, podcasts and social media) sustained by your firm's underlying investments in the last 24 months.
 - i. Please add any details your firm feels is necessary to explain and/or mitigate the media coverage.

5. RELATED PARTY ISSUES QUESTIONNAIRE

- a. Please confirm that the Firm and any of its affiliates is/are registered with the U.S. Securities and Exchange Commission (“SEC”).
 - i. Are there any outstanding issues regarding the Firm’s/affiliates’ SEC registration? If yes, please explain.
 - ii. If the Firm/partner/affiliates is/are not registered with the SEC, please indicate the appropriate regulatory exemption, and explain how the regulatory exemption applies to the Firm/affiliates.
- b. Please indicate any other regulatory agencies, other than the SEC, that the Firm or any of its affiliates is/are registered with, including but not limited to, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Association, any state agencies, or any similar regulatory agency in a country other than the United States.
 - i. Are there any outstanding issues regarding the registration(s)? If yes, please explain.
- c. If the Firm or any of its affiliates is/are not registered with the SEC or other regulatory body, please advise whether the Firm intends to become registered in the near future.
- d. Have any of the regulatory agencies described in Sections 5(a)(i) and 5(a)(ii) above conducted audits or reviews of the Firm/affiliates in the last five (5) years? If yes, describe the ultimate dispositions of each, and state whether there remain any outstanding issues or recommendations?
- e. Are potential investments by related parties of the Firm or its affiliated entities (i.e., family members of directors/employees/staff) generally disallowed? If not, explain any exceptions.
- f. Does your Firm utilize and/or employ any entity under a third-party marketing and/or placement agent arrangement? If yes, provide a copy of the agreement. If an agreement does not exist, describe the details of the relationship and/or the transaction(s) (see Section 13 below).
- g. If the response to paragraph f. immediately above is affirmative, is the third-party marketing firm and/or placement agent utilized by your Firm with all prospective clients or only with a subset thereof? Describe the services and responsibilities provided to the Firm by such third-party marketing firm and/or placement agent (see Section 13 for Placement Agent Disclosure Certification).
- h. Describe any direct or indirect affiliation of third-party marketing firms and placement agents and /or their respective principal members and/or employees with any current or former SERS Board member(s), current or former SERS employee(s), or any other current or former Pennsylvania public official(s).
 - i. Does the scope of work for such placement agent(s) or other third party include contacting or meeting with SERS staff, SERS Board members, or other Pennsylvania public officials? If so, what contacts and meetings have taken place, and what compensation, if any, has been earned by or paid to such placement agents or other third parties?
- j. Provide the names of all other third-party professional service providers not previously identified (e.g., legal firms, consultants, third party administrators, etc.). Describe any direct or indirect affiliation of such third-party professional service providers and/or their respective employees with any current or

former SERS Board member(s), current or former SERS employee(s), or any other current or former Pennsylvania public official(s).

- k. Provide the name(s) of any and all board member(s), managing partner(s), senior executive(s), principal(s), or related level position(s) from the Firm, and disclose whether any such individuals are current or former (i) SERS Board members, (ii) SERS employees, (iii) SERS third party investment consultants, and/or (iv) a member of the immediate families of any such individuals described in (i)-(iii) above.
- l. Is the Firm aware of any other business or social relationships and/or transactions between itself, or any of its principals/employees or affiliates, and SERS or a current or former SERS Board member(s) and employee(s)? If yes, provide a description of the relationship and/or transaction.
- m. Did any person from the Firm, or any person affiliated with the Firm, directly or indirectly compensate any person or entity for referring the Firm to SERS, or to retain or increase the Firm's level of business activity with SERS? If yes, provide a copy of any agreement relating to same. If an agreement does not exist, describe the details of the relationship and/or the transaction.
- n. Is the Firm aware of any other relationships and/or transactions, outside of the investment holdings specific to this Questionnaire, between the Firm, its principals/employees or its affiliates and SERS, current or former SERS employee(s), or current or former SERS Board member(s)? If so, provide a description of the relationship and/or transaction.
- o. Is the Firm aware if any of SERS' third-party investment consultants, any of such consultants' partners/principals, or any of their affiliate entities, currently are (or at any time previously been) an investor/limited partner of the Firm or if such entity has/had a financial interest in current or former portfolios of the Firm? If so, please detail the relationship(s).
- p. Is the Firm aware if any of SERS' third-party investment consultants, any of such consultants' partners/principals, or any of their affiliate entities, currently hold (or at any time previously held) a financial interest in (i) the Firm, and/or (ii) any of their affiliate entities? If so, please detail the relationship(s).

6. **MARKETING/CLIENT SERVICE QUESTIONNAIRE**

- a. Who is responsible for the Firm's client service and/or marketing?
- b. Provide the names, telephone numbers, email addresses and facsimile numbers of the primary client service people who will be responsible for the SERS account.

7. **CFA INSTITUTE ASSET MANAGER CODE QUESTIONNAIRE**

- a. Does your Firm claim compliance with the CFA Institute Asset Manager Code of Professional Conduct? If not, please explain.

8. **KEY PERSONS DEFINITION**

- a. The following definition of "Key Persons" shall be used for the purpose of completing the Information Regarding Other Business Interests Form (see Section 9) and the Litigation Information Form (see Section 10).
- b. **Key Persons** – Persons listed in the Key Persons provision within your Firm Limited Partnership Agreement or equivalent. If your Firm does not use a Limited Partnership Agreement or equivalent, please list your Firm's officers, partners, principals, directors, and other personnel that your Firm identifies as being crucial to the Firm's relationship with the SERS Board either because of their leadership position with your Firm or because they are essential to the services/work being performed.

9. INFORMATION REGARDING OTHER BUSINESS INTERESTS FORM

This form **must be completed** by each of the Firm's Key Persons and should list all material business endeavors or investments that could impact the amount of time available to perform their respective work activities being proposed.

Principal Name: _____

Firm Name: _____

- a. List all business endeavors or investment-related activities in which you are actively or will be involved, including the percentage of time that you typically dedicate to each endeavor/activity.
- b. List all corporate and/or non-profit directorships that you currently hold.
- c. To your knowledge, are any entities identified in (a) and (b) above currently involved in transactions (including contracts) with the Commonwealth of Pennsylvania?

Yes _____ No _____

If "yes," please explain.

Signature: _____

Date: _____

Printed Name _____

10. LITIGATION INFORMATION FORM

This form **must be completed** by each of the Firm's Key Persons.

Note: All "Yes" answers must be accompanied by a detailed explanation of the situation and/or circumstances surrounding same on a separate sheet.

Principal Name: _____

Firm Name: _____

a. Are you now, or have you ever been, a named defendant in any criminal proceeding or in any civil legal action involving a claim of greater than \$250,000?

Yes _____ No _____

b. Has any organization of which you have been a member of its senior management, or in which you have had a meaningful ownership interest (greater than 5%), ever been a named defendant in any criminal proceeding or in any civil legal action involving a claim of greater than \$500,000?

Yes _____ No _____

c. Have you or any organization in which you have had a meaningful ownership interest (greater than 5%), or in which you are, or were, a member of its senior management, ever filed a voluntarily, or had filed against you/it an involuntarily, bankruptcy petition?

Yes _____ No _____

d. Has any licensor, franchisor, or master distributor ever initiated proceedings to terminate a business relationship with you or any organization in which you have ever been a member of its senior management?

Yes _____ No _____

e. Has any business partner, joint venturer, or subcontractor ever sought injunctive relief or arbitration, or otherwise commenced legal proceedings to terminate any business or contractual relationship, with you or any organization in which you have ever been a member of its senior management?

Yes _____ No _____

f. Have you or any organization in which you have had a meaningful ownership interest (greater than 5%), or in which you are, or were, a member of its senior management, ever (i) been the subject of any federal, state, or other regulatory investigation or disciplinary hearing or proceeding, (ii) agreed to any consent order or decree in connection with any alleged violation of federal or state laws or regulations, or (iii) pleaded no contest in any legal or administrative proceeding?

Yes _____ No _____

Signature: _____

Date: _____

Printed Name _____

11. RULE 206(4)-5 (PAY-TO-PLAY) CERTIFICATION

SERS wishes to ensure that any and all investment management and/or advisory firms (and their affiliates) that it considers doing business with are fully in compliance with (i) 17 C.F.R. § 275.206(4)-5, also known as Rule 206(4)-5, promulgated under Section 206(4) of the Investment Advisers Act of 1940 (the “Pay-to-Play Rule”), and (ii) applicable Board and SERS policies.

Please provide responses to the following requests:

- a. During the last two (2) years, has the Firm, and/or any of its general partners, managing members, executive officers, employees, owners, and/or any third parties affiliated therewith (e.g., spouses, relatives, lawyers, agents, consultants, companies, etc.) made any campaign contributions to a member of the Commonwealth of Pennsylvania State Employees’ Retirement Board, a Pennsylvania elected official, or a candidate for public office in Pennsylvania?

Yes ___ No ___

- i. If the response is yes, identify (1) the date the person who made the contribution was hired at the Firm, (2) the date of the campaign contribution, (3) the person or entity making, coordinating and/or soliciting the campaign contribution, (4) the person or entity receiving the campaign contribution, and (5) the amount of the campaign contribution.

Date Person was hired at the Firm	Date of Campaign Contribution	Person/Entity Making Contribution	Person/Entity Receiving Contribution	Amount of Campaign Contribution

- b. Copies of the Firm’s internal policies applicable to or addressing the Pay-to-Play Rule.
- c. A completed, signed and dated copy of the certification on the following page.
- d. If the Firm is not subject to 17 C.F.R. § 275.206(4)-5 (known as “Rule 206(4)-5” or the “Pay-to-Play Rule”), does the Firm prohibit/monitor contributions to elected state officials and candidates for elective state government office? Does the Firm have a written policy addressing this topic? If so, please provide a copy of the policy.

RULE 206(4)-5 (PAY-TO-PLAY) CERTIFICATION

The undersigned has authority to certify on behalf of **[name of Firm]** that it (i) is an investment advisor subject to 17 C.F.R. § 275.206(4)-5 (also known as Rule 206(4)-5 or the Pay-to-Play Rule) promulgated pursuant to Section 206(4) of the Investment Advisers Act of 1940, (ii) acknowledges its affirmative responsibilities thereunder, and (iii) is in full compliance therewith.

The undersigned further certifies that the above-referenced firm shall submit annually to SERS the following certification:

I have reviewed the initial responses of **[name of Firm]** to this Section 11 of the SERS' Master Due Diligence Questionnaire, and (where applicable) have provided changes/supplements to such initial responses in a separate attachment to this certification.

As of the date of this certification, **[name of Firm]** hereby acknowledges its compliance responsibilities under Rule 206(4)-5 (the Pay-to-Play Rule), promulgated pursuant to Section 206(4) of the Investment Advisers Act of 1940, and hereby certifies that it remains in compliance therewith.

Signature: _____

Date: _____

Printed Name _____

12. REPORTING POLITICAL CONTRIBUTIONS

In addition to any applicable obligations of the **Firm** and its affiliates under Investment Advisers Act Rule 206(4)-5 (the Pay-to-Play Rule) (see Section 11), **[name of Firm]** (on behalf of itself and its affiliates) understands and hereby acknowledges that, in the event it subsequently enters into a contract with the Commonwealth of Pennsylvania State Employees' Retirement System ("SERS"), it will be subject to the reporting requirements set forth in 25 P.S. § 3260a of the Pennsylvania Campaign Finance Act (Article XVI of the Pennsylvania Election Code).

In consideration of the foregoing, please provide a completed, signed and dated copy of the below certification:

PENNSYLVANIA ELECTION CODE CERTIFICATION

The undersigned has authority to certify on behalf of **[name of Firm]** that, if required to submit a political contributions report under Pennsylvania law, it:

- a. has the requisite internal controls, mechanisms and/or policies in place to fully and completely comply with any applicable reporting requirements regarding its political contribution activity and/or that of its affiliates, employees or other covered person or entities; and
- b. shall provide to SERS a copy of (i) its most recent report submitted to the Secretary of the Commonwealth of Pennsylvania pursuant thereto, and (ii) each successive report (if any) by February 15th of each year during the term of any contractual relationship it may have with SERS.

Signature: _____

Date: _____

Printed Name _____

13. PLACEMENT AGENT DISCLOSURE CERTIFICATION

For purposes of this form the following definitions apply:

"Investment" shall mean an actual or proposed investment of SERS funds as presented to and/or ultimately approved by the State Employees' Retirement Board ("Board").

"Investment Manager" shall mean an asset management entity (e.g., general partner of a limited partnership; public securities manager, etc.) that is seeking to be, or has been, retained by SERS to manage an Investment for a fee.

"Placement Agent" shall mean any third party that has entered into an arrangement to be paid a Placement Fee to perform sponsoring and/or brokering services on behalf of an Investment Manager in connection with the placement/investment of specific investors (i.e., SERS and/or a third-party investor).

"Placement Fee" shall mean any compensation or payment of a commission, finder's fee, bonus or any other benefit to be paid to a Placement Agent to perform sponsoring and/or brokering services on behalf of an Investment Consultant, whether paid directly or indirectly, in connection with the placement/investment of specific investors (i.e., SERS and/or a third-party investor). A Placement Fee could be paid in connection with an Investment ultimately made with an Investment Manager by SERS and/or an investment made by a third-party investor, to broker an introduction between the Investment Manager and SERS and/or a third-party investor, or for making a favorable recommendation regarding a specific Investment Manager to SERS and/or a third-party investor.

"Related Parties" shall mean employees, officers, directors, managers, owners, agents or affiliates.

The undersigned has authority to certify on behalf of [_____] ("Investment Manager") the following statements. Please use additional sheets if necessary to provide complete responses.

- a. Please provide a statement as to whether the Investment Manager or its Related Parties compensated or agreed to compensate, directly or indirectly, any person or entity to act as a Placement Agent in connection with an Investment by SERS;
- b. Please provide a statement as to whether the Investment Manager or its Related Parties compensated or agreed to compensate, directly or indirectly, any person or entity to act as a Placement Agent in connection with an investment by a third-party investor in a partnership (or any parallel investment entity) in which SERS is considering;
- c. If a Placement Agent was compensated as described in items a. and/or b. above, please provide the name, address, and other contact information, including a resume, of each officer, partner, principal, or related level position of the Placement Agent (and any employee providing similar services in connection with the Investment) detailing the person's role, education, professional delegations, regulatory licenses and investment/work experience. Investment Managers shall note whether any such person is a current or former SERS Board member, SERS employee or consultant, or a member of the immediate family of such a person;

- d. If a Placement Agent was compensated as described in items a. and/or b. above, please confirm that SERS will not bear any portion of Placement Agent costs directly or indirectly as a limited partner in the partnership (or any parallel investment entity) throughout the life of the investment, by indicating “Yes” below:
Yes _____ No _____
- i. If your Firm indicated “No”, please explain.
- e. Please provide the names of any current or former SERS Board members or SERS employees or consultants who are either employed by or receiving compensation of any kind, directly or indirectly, from such Placement Agent(s);
- f. Please provide a description of any and all compensation of any kind provided or agreed to be provided to such Placement Agent(s) in connection with an Investment or potential Investment, including the nature, timing and value thereof;
- g. Please provide a description of the services to be performed by such Placement Agent(s);
- h. Please provide a statement disclosing whether such Placement Agent(s) is utilized by the Investment Manager or its Related Parties with all prospective investors, a subset of prospective investors, or a single prospective investor. Please provide the names of any current or former SERS Board members or SERS employees or consultants who suggested the retention of such Placement Agent(s);
- i. Please state whether such Placement Agent(s) is registered with the Securities and Exchange Commission (SEC) and/or the Financial Industry Regulatory Authority (FINRA), and provide the details of such registration (or an explanation as to why no registration is required); and
- j. Please state whether such Placement Agent(s) or any of its Related Parties are registered as a lobbyist with any state, federal or foreign government.

The Investment Manager agrees to notify the SERS Investment Office of any changes that would make the statements it has provided in response to this Placement Agent Disclosure Form untrue or no longer accurate within ten (10) business days of the date that the Investment Manager knew or should have known of such change.

Signature: _____

Date: _____

Printed Name _____

14. INDIRECT COMPENSATION CERTIFICATION

As recommended to SERS by the Public Pension Management and Asset Investment Review Commission (“PPMAIRC”), SERS requires the prospective consultant to certify in writing that 1) it does not receive any indirect compensation from funds/accounts in which SERS is considering investing; and 2) once the prospective consultant becomes a consultant, the consultant will promptly notify SERS if it begins to receive any indirect compensation from managing funds in which SERS is invested.

- a. The undersigned has authority to certify on behalf of **[name of Firm]** that it does not receive indirect fees, payments or benefits/items of value (such as commissions, rebates, or retrocessions on trades, purchases, sales, or other investment-related transactions (collectively, “Indirect Compensation”)) in connection with the consulting services in which SERS is considering.
- b. The undersigned further certifies that the above-referenced Firm shall notify SERS immediately after it becomes aware, or should have been aware, that it has received any such Indirect Compensation in connection with the consulting services being provided to SERS after the date of this Attestation.

The undersigned has authority to certify the above statement on behalf of [name of Firm].

Signature: _____

Date: _____

Printed Name _____

15. PENNSYLVANIA-BASED INVESTMENTS ACKNOWLEDGMENT

The State Employees' Retirement System ("SERS"), when possible and consistent with its fiduciary duties imposed by law (including its obligation to invest and manage the State Employees' Retirement Fund for the exclusive benefit of its members), may consider whether an investment in any project or business enhances and promotes the general welfare of the Commonwealth of Pennsylvania (the "Commonwealth") and its citizens, including, but not limited to, investments that increase and enhance the employment of Commonwealth residents, encourage the construction and retention of adequate housing, and stimulate further investment and economic activity in the Commonwealth.

In furtherance thereof, where investment opportunity characteristics are equivalent, this general policy will favor investments that will have a positive impact on the economy of the Commonwealth

The undersigned has authority to acknowledge the above SERS statement on behalf of [name of Firm].

Signature: _____

Date: _____

Printed Name _____

16. SCRUTINIZED BUSINESS ACTIVITIES CERTIFICATION

SERS is restricted by law ([Protecting Pennsylvania's Investments Act – Act 44 of 2010](#)) from investing in companies with scrutinized business activities.

This restriction does not apply to SERS' holdings in alternative investments or indirect holdings.

For purposes of this certification, the following definitions apply:

"Alternative investments" shall mean an investment in a private equity fund, private debt fund, venture fund, real estate fund, hedge fund or absolute return fund.

"Indirect holdings" shall mean all securities held in an account or fund such as a mutual fund managed by one or more persons not employed by a public fund, in which the public fund owns shares or interests together with other investors.

The undersigned has authority to certify compliance with this requirement in connection with the proposed investment product(s) on behalf of [name of Firm].

Signature: _____

Date: _____

Printed Name _____

**17. DIVESTMENT OF RUSSIA-RELATED AND BELARUS-RELATED ASSETS
ACKNOWLEDGMENT**

The Pennsylvania State Employees' Retirement Board (Board) viewed Russia's recent military invasion of the country of Ukraine with deep concern.

At the Board's meeting on March 4, 2022, after discussion with the Board's general investment consultant, the Board unanimously passed motion 2022-13, which states:

DIVESTMENT OF RUSSIA-RELATED AND BELARUS-RELATED ASSETS

By motion that was moved, seconded, and approved by board members, it was RESOLVED: That the board, in response to Russia's invasion of Ukraine, the SERS administrative staff, investment office staff and the board's investment consultants are to begin immediately to take all actions necessary to divest SERS of all Russia-related and Belarus-related assets and investments held by SERS in a fiduciarily prudent manner and within a reasonable time;

AND FURTHER, the administrative and investment office staff of SERS shall direct the investment managers, consultants, and other investment partners of SERS to cease making further Russia-related and Belarus-related investments until such time as the board, after receiving the advice of internal staff and outside investment consultants and advisors, concludes that it is fiduciarily prudent to again do so.

The undersigned, on behalf of [name of Firm], acknowledges and agrees to comply with the above SERS Board motion.

Signature: _____

Date: _____

Printed Name _____

APPENDIX A

Please provide a completed copy of the spreadsheet that follows:



Copy of
ILPA-DDQ-Diversity-

ATTACHMENT II: SERS' FORM OF STANDARD CONTRACT**pennsylvania**
STATE EMPLOYEES' RETIREMENT SYSTEM

Commonwealth of Pennsylvania
State Employees' Retirement System
("SERS")

Form of Standard Contract

**COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT SYSTEM**

SERS # _____

AGREEMENT FOR _____ CONSULTING SERVICES

This Agreement for _____ Consulting Services, by and between the **COMMONWEALTH OF PENNSYLVANIA STATE EMPLOYEES' RETIREMENT SYSTEM** (herein "SERS") and _____, a [State of incorporation/entity type (e.g., Delaware limited liability company)], with its principal office and place of business located at _____ (herein "CONSULTANT"), is effective as of this ___ day of _____, 202_.

WITNESSETH:

WHEREAS, pursuant to Title 71, Sections 5101, *et seq.* of the Pennsylvania Consolidated Statutes (the "Retirement Code") and specifically Section 5931(a) thereof, the SERS Board has exclusive control and management of the Pennsylvania State Employees' Retirement Fund (herein the "Fund"), with full power to invest the same, subject to terms and conditions imposed by law; and

WHEREAS, pursuant to Section 5902(b) of the Retirement Code, the SERS Board has authority to contract for such professional services as it deems advisable in order to fulfill its duties; and

WHEREAS, CONSULTANT possesses and will employ, in a fiduciary capacity, professional knowledge, experience, and expertise in _____ investment consulting, and investment matters generally, to preserve and enhance the financial integrity of the Fund;

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound hereby, the parties hereto agree as follows:

1. Engagement. SERS hereby engages CONSULTANT, and CONSULTANT hereby accepts SERS' engagement to provide proxy voting services, including, but not limited to, (i) proxy voting guideline review and development; (ii) proxy research, voting, and reporting; and (iii) general services and other services as defined in the SERS' Request for Information for such services, dated _____, and CONSULTANT'S response thereto, all consistent with the terms of this Agreement and such other policies and directives as may be communicated in writing by SERS to CONSULTANT from time to time. CONSULTANT shall at no time have (a) custody, possession or control of any of SERS' investment assets or any cash, securities or other assets of SERS and/or the Fund, or (b) any ownership, intellectual property rights, or any other rights to the reports, projects, studies, or other documents and information (including underlying data relating thereto) relating to SERS and/or the Fund. CONSULTANT may not enter into any transaction on behalf of SERS or legally bind SERS in any way and will not provide any tax or legal advice to SERS, or otherwise perform any custodial duties with respect to SERS.

2. Consulting Team. CONSULTANT shall assign and provide a full and dedicated consulting team to perform the services for SERS as contemplated under this Agreement. The consulting team shall consist of the key persons identified in Section 11 of this Agreement and any other seasoned personnel reasonably necessary to perform and capable of compiling due diligence, producing the documentation required herein, and producing timely responses to ad hoc needs.

3. SERS Investment Policies and Guidelines. CONSULTANT shall abide by the Retirement Code, SERS' Statement of Investment Policy, and SERS' statements of investment objectives and guidelines for the various asset classes, as applicable, and the Board's U.S. & International Proxy Voting Policy (such investment policy, objectives and guidelines hereinafter collectively referred to as the "Policies and Guidelines"). The most recent Policies and Guidelines can be found on the SERS website, as provided in Exhibit A, and are incorporated by reference. SERS may retitle, amend or supplement the Policies and Guidelines from time to time in its sole discretion, and written notice thereof shall be furnished to CONSULTANT.

4. CONSULTANT'S Services. CONSULTANT shall provide the proxy voting services for SERS as outlined above and more particularly set forth in Exhibit B attached hereto, as modified and amended from time to time, in connection with the Fund and its asset classes.

5. Standard of Performance. CONSULTANT shall discharge its duties hereunder solely in the interest of SERS and the Fund with the care, skill, judgment, and diligence under the circumstances

then prevailing that a prudent expert and/or fiduciary acting in a like capacity and familiar with such investment matters would use in the conduct of an enterprise of like character and with like aims.

6. Compensation. CONSULTANT shall be compensated (quarterly in arrears) for its services provided hereunder as more completely described in Exhibit C, attached hereto and made a part hereof.

7. CONSULTANT'S Insurance. CONSULTANT represents and warrants that the insurance coverage submitted to SERS prior to execution of this Agreement is currently in full force and effect and is unmodified, and hereby agrees that such representation and warranty shall survive the execution and/or termination of this Agreement. CONSULTANT shall maintain such levels of insurance coverage, at a minimum, in effect throughout the term of this Agreement. CONSULTANT shall submit evidence of continued insurance coverage periodically as mutually agreed upon by SERS and CONSULTANT during the life of this Agreement.

CONSULTANT shall be expected to comply with such procedures and requirements relating to insurance and/or bond coverage for the protection of SERS and the Fund as SERS may convey to CONSULTANT in writing. SERS may require changes to CONSULTANT'S insurance and/or bonding coverage as it deems appropriate for the protection of SERS and the Fund by giving written notice of such required changes to CONSULTANT at least thirty (30) days in advance of the effective date of such changes. CONSULTANT would then have the option of acquiring such coverage as SERS requires or terminating the contract pursuant to Section 20(b)(2) of this Agreement.

8. Representations of CONSULTANT.

(a) *General Representations.* CONSULTANT represents, warrants, confirms and agrees that:

(i) it is a "fiduciary" with respect to SERS and the Fund as such term is defined in Section 3(21)(A) of ERISA, and is not subject to any of the disqualifications described in Section 411 of ERISA, irrespective of the scope of ERISA's application to SERS and/or the Fund;

(ii) (A) it is duly registered and in good standing as an investment adviser under the Investment Advisers Act of 1940, as amended, and shall maintain such registration in good standing at all times during the term hereof; (B) it shall timely furnish to SERS throughout the term hereof a complete and legible copy of Parts I and II of CONSULTANT'S current Form ADV filed with the United States

Securities and Exchange Commission (“SEC”) pursuant to Section 203(c) of the Investment Advisers Act of 1940, as amended; (C) throughout the term hereof, it shall make any filings and pay any fees required by the Pennsylvania Securities Act of 1972, as amended (the “1972 Act”); and (D) any investment advisor employed by or affiliated with CONSULTANT that maintains a place of business in Pennsylvania, that at any time during the term hereof may provide services to SERS pursuant to this Agreement, shall be duly registered and in good standing with the Pennsylvania Securities Commission in accordance with, and as may be required by, the 1972 Act;

(iii) it has substantial experience and expertise in providing the services contemplated by this Agreement; and

(iv) CONSULTANT’S conduct and actions for and on behalf of SERS shall be in compliance at all times with all applicable laws and regulations, including but not limited to those relating to the licensing of its personnel. CONSULTANT understands and acknowledges that it is subject to the reporting requirements set forth in 25 P.S. § 3260a of the Pennsylvania Campaign Finance Act (Article XVI of the Pennsylvania Election Code). In the event CONSULTANT is required to submit a report to the Secretary of the Commonwealth of Pennsylvania pursuant to such law, CONSULTANT hereby agrees to provide SERS’ Executive Director a copy of its (i) current report by February 15th of the year following the date of this Agreement, and (ii) each of their successive report(s) (if any) by February 15th of each year during the term of this Agreement. CONSULTANT shall also comply with SEC Rule 206(4)-5 (the “Rule”) including, but not limited to, recordkeeping of Contributions as required by the Rule. CONSULTANT shall annually provide SERS’ Chief Counsel with a report of all (without accounting for any exceptions or exemptions under the Rule) Contributions made by the CONSULTANT or any Covered Associate of CONSULTANT to any member of the SERS Board or to any Official of a Government Entity of the Commonwealth of Pennsylvania (as such capitalized terms are defined in the Rule).

(b) *Evidence of Authority.* CONSULTANT shall furnish SERS as requested, but in any event no less than annually, with certified resolutions or other appropriate documentation evidencing the authority of its partners, officers, affiliates and employees to act on behalf of CONSULTANT.

(c) *Reaffirmation.* CONSULTANT hereby reaffirms the reliability and accuracy of the written and oral representations made to SERS in the solicitation and/or negotiation of this Agreement.

(d) *No Finder's, Solicitor's or Similar Fee.* Neither CONSULTANT nor any of its affiliates, nor any of their respective partners, directors, officers, or employees have employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and none of the aforementioned parties have paid or agreed to pay, and shall not pay, any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other compensation contingent upon or resulting from the award or making of this Agreement, except where: (i) CONSULTANT has disclosed, in writing to SERS, that it has engaged such a company or person other than a bona fide employee to secure this Agreement, and (ii) the cost of such engagement is not charged to SERS under the terms of compensation under this Agreement or any subsequent agreement. For breach or violation of this representation, SERS shall have the right to void this Agreement without liability, entitling SERS to recover all monies paid hereunder, and CONSULTANT shall not make claim for, nor be entitled to recover, any sum or sums due under this Agreement or for any services which it may have provided under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded to SERS for such breach or violation, nor shall it constitute a waiver of SERS' rights to claim damages or to take any other action provided for by law or pursuant to this Agreement.

(e) *CONSULTANT'S Website.* CONSULTANT agrees that any provisions pertaining or related to indemnification, governing law or jurisdiction, confidentiality or a payment of money (whether as a fine, liquidated damage, levy, access fee or other similar imposition) contained in any current or future website or similar electronic forum/data transfer maintained or made available by or on behalf of CONSULTANT shall not apply to or have any force or effect on SERS, and that the terms of this Agreement shall supersede and otherwise control the rights, obligations and duties of the parties hereto.

(f) *Reliance.* CONSULTANT acknowledges that SERS has relied and will continue to rely upon CONSULTANT's representations, warranties, confirmations and agreements.

(g) *W-9.* CONSULTANT shall promptly provide SERS with a current W-9 tax form. CONSULTANT is responsible for updating this form with SERS as it becomes necessary to do so.

(h) *Form ADV.* SERS hereby acknowledges receipt of Parts 1, 2A, 2B and/or any other relevant part of CONSULTANT'S Form ADV, including a written disclosure statement not less than 48 hours prior to the execution of this Agreement by the parties.

(i) *Notice of Change.* CONSULTANT shall promptly notify SERS in the event any of the foregoing acknowledgments, representations, warranties or agreements herein shall no longer be true and/or require an update.

9. CONSULTANT as Independent Contractor. CONSULTANT shall perform its services hereunder as an independent contractor and shall provide worker's compensation insurance where the same is required. CONSULTANT hereby accepts full responsibility for the payment of, and shall pay when due, taxes of any nature or jurisdiction upon CONSULTANT's property and income, premiums for worker's compensation insurance, Social Security taxes, all income tax deductions, and any other taxes or payroll deductions required by law for its employees, personnel, or agents who perform services specified by this Agreement.

10. Changes in CONSULTANT'S Status. In the event of any actual or proposed change in CONSULTANT'S status, or event affecting CONSULTANT, including, without limitation, (a) change in or departure of directors, officers, partners, employees or affiliates of CONSULTANT, including without limitation, change in key persons and/or their respective roles (as designated in Section 11 below), (b) material modification of business structure, (c) change in actual control or management of CONSULTANT, (d) material change in SEC requirements or other government or private registration, accreditation or licensing requirements affecting CONSULTANT, (e) alleged violations by, or investigations of, CONSULTANT, any of its affiliates, or any of their respective partners, directors, officers, or employees, of the Investment Advisers Act of 1940, as amended, and/or any federal, state or foreign law, rule or regulation, (f) material deterioration in CONSULTANT'S financial condition, including but not limited to, the filing of a petition in bankruptcy, (g) CONSULTANT'S awareness that its representations and warranties made herein cease to be true and/or require an update, and (h) litigation alleging negligence, fraud or breach of fiduciary duty by CONSULTANT, any of its affiliates, or any of their respective partners, directors, officers, or employees, CONSULTANT shall immediately notify SERS in writing.

11. Key Persons. It is specifically understood and agreed that SERS engages CONSULTANT in reliance upon **[insert name of primary consultant]** having primary responsibility to perform the bulk of CONSULTANT'S services to SERS. _____ shall serve as _____ Consultant to SERS with ongoing broad oversight responsibility for development and maintenance of SERS' strategic _____ investment plan under the direction of SERS' staff. _____ is expected to be visible and accessible to SERS and its staff in such capacity. _____'s additional

responsibilities include day-to-day management of the services to be provided to SERS, supervision of Assistant Consultant, _____, and generally serving as principal contact for responding to SERS' questions and concerns, and otherwise maintaining an effective relationship between CONSULTANT and SERS. Substitutions of or replacements for the above persons may occur only with the prior written consent of SERS.

12. Indemnification of SERS. CONSULTANT shall indemnify and forever hold harmless the Commonwealth of Pennsylvania, the Fund, SERS and its Board members, officers, agents and employees, from and against any and all losses, claims (including claims arising from injury or death of CONSULTANT'S employees brought by such employees, their legal representatives or anyone otherwise entitled to receive damages by reason thereof, which indemnification would, in the absence of this provision, be prohibited by applicable worker's compensation statutes), demands, actions, or liabilities of any nature, including, but not limited to, attorneys' fees, expenses and court costs, based upon, arising from or in connection with the negligent, reckless, willfully improper or illegal performance of services or failure to perform services under this Agreement, actions outside the scope of authority, any imprudent act or omission, any other breach of this Agreement, or any violation of applicable law (including but not limited to the Investment Adviser Act of 1940 or the Employee Retirement Income Security Act of 1974) by CONSULTANT, its members, directors, officers, agents, affiliates and employees. At SERS' option, and in its sole discretion, CONSULTANT shall defend at its sole expense any actions brought against the Commonwealth of Pennsylvania, the Fund, SERS and its Board members, officers, agents and employees arising out of or in connection with any services performed or the failure to perform services under this Agreement, or other breach of this Agreement, by CONSULTANT, any of its affiliates, their respective partners, directors, officers, employees and/or agents, and the costs of such defense shall be borne by CONSULTANT and shall not constitute an expense of, and shall not be paid out of, Fund assets. SERS acknowledges that CONSULTANT does not guarantee any rate of return on, or market value of, any investment of SERS pursuant to this Agreement.

13. Confidentiality. All reports, projects, studies, and other documents and information (including underlying data relating thereto) relating to SERS and the Fund which CONSULTANT may prepare and deliver hereunder, shall be considered confidential, shall become the property of SERS, and shall not be disclosed, published, circulated, or used in any manner by CONSULTANT without SERS' prior written approval, except as required by law. All information relating to SERS, whether in written or spoken form, that SERS provides to CONSULTANT or that is learned by CONSULTANT in connection with providing services to SERS, shall be considered confidential, and shall not be disclosed, published,

circulated, or used in any manner by CONSULTANT without SERS' prior written approval, except as required by law. CONSULTANT shall require its members, directors, officers, agents and employees to comply with the provisions of this Section 13 to the same extent as CONSULTANT. Notwithstanding the foregoing, CONSULTANT may use SERS' name and logo in materials presented to clients and potential clients as part of a list of CONSULTANT's clients, and may list an employee of SERS as a reference for CONSULTANT'S services. To the extent permitted under the Pennsylvania Right to Know Law, 65 P.S. §§ 67.101 – 67.3104 (and the exceptions provided by law to same) all CONSULTANT information (that does not qualify as Account Information) shall be treated as confidential by SERS and shall not be disclosed to any person or entity other than SERS' officers, employees and agents, except for information that (i) is publicly available other than as a result of disclosure by SERS' officers, employees or agents, (ii) becomes known to SERS from a source that, to SERS' knowledge, is not bound by a duty of confidentiality to CONSULTANT, or (iii) SERS is legally required to disclose.

14. Conflict of Interest.

(a) *Definitions.* (i) "Conflict of Interest" means any set of facts or circumstances that create an actual conflict with CONSULTANT's duty (consistent with fiduciary standards of care) to provide proxy voting services that are aligned solely with the best interests of SERS, its members, and their beneficiaries. A Conflict of Interest exists when CONSULTANT knows or has reason to know that it (including its members, partners, officers, directors or employees, or any relatives thereof, or any person or entity with a significant personal or business relationship to CONSULTANT) has a financial or other interest that is likely to bias, compromise, or otherwise impair, the impartiality, fairness, independence or objectivity of the CONSULTANT's evaluation of or advice with respect to a transaction or assignment on behalf of SERS; and (ii) "Disclosable Interest" means any interest or circumstance that may give rise to an actual, potential or perceived Conflict of Interest.

(b) *Representations.* CONSULTANT represents and warrants that (i) it has no interest and shall not acquire any interest, direct or indirect, that would constitute a Conflict of Interest or Disclosable Interest, (ii) in the performance of this Agreement, it shall exercise due care in hiring and shall not knowingly employ any person having any such conflicting interest, and (iii) after due investigation, it has no knowledge of any Conflict of Interest or Disclosable Interest on the part of any of its affiliates or its affiliates' members, partners, directors, officers or employees.

(c) *General Duty.* CONSULTANT shall establish appropriate safeguards to discourage and prohibit its affiliates, and CONSULTANT's and its affiliates' respective members, partners, directors, officers, employees and agents from utilizing their positions for a purpose that constitutes a Conflict of Interest or a Disclosable Interest. CONSULTANT shall operate with complete independence and objectivity without any Conflicts of Interest or Disclosable Interests with respect to the services provided under this Agreement.

(d) *Warranty.* Except as otherwise disclosed and approved by SERS prior to the effective date of this Agreement, CONSULTANT hereby represents and warrants that, as of the effective date of this Agreement, and to the best of its knowledge and belief, there are no Conflicts of Interest or Disclosable Interests.

(e) *Duty to Disclose.* (i) CONSULTANT agrees that if during the term of this Agreement, it becomes aware or is made aware of a Conflict of Interest or a Disclosable Interest, CONSULTANT shall immediately and fully disclose such Conflict of Interest or Disclosable Interest in writing to SERS pursuant to the notice provisions of Section 19 of this Agreement. The disclosure shall include a description of the action(s) taken or proposed to be taken by CONSULTANT to avoid or mitigate the effect of such Conflict of Interest or Disclosable Interest. SERS reserves the right to make a final determination regarding the appropriateness of such action(s) and the existence of a Conflict of Interest, and CONSULTANT hereby agrees to abide by such determinations; and (ii) CONSULTANT agrees that, within sixty (60) days after the end of each annual period during the term of this Agreement, it shall submit to SERS a written report in which CONSULTANT certifies without qualification that after due investigation it has determined that, except for disclosures made pursuant to clause (i) herein, or otherwise previously disclosed (e.g., in CONSULTANT'S Form ADV): (1) it has no interest, direct or indirect, that would constitute a Conflict of Interest or Disclosable Interest, (2) it has exercised due care in hiring and has not knowingly employed any person having any such conflicting interest, and (3) after due investigation it has no knowledge of any Conflict of Interest or Disclosable Interest on the part of any of its affiliates or any of its affiliates' members, partners, directors, officers or employees. The written report shall also include a brief description of all disclosures made by CONSULTANT to SERS during such annual period pursuant to clause (i) herein. CONSULTANT's failure to timely submit such report to SERS, or any false statement in such report, shall be considered a material breach of this Agreement and shall be subject to the provisions in clause (f) of this Section 14.

(f) *Remedies.* In the event that SERS determines that CONSULTANT was aware or should have been aware of a Conflict of Interest or a Disclosable Interest prior to, as of, or following the entering into of this Agreement and failed to properly disclose such Conflict of Interest or Disclosable Interest to SERS at the appropriate time, such nondisclosure shall be considered a material breach of this Agreement. In the event of CONSULTANT'S breach of this Section 14, SERS shall have the right to void this Agreement without liability, entitling SERS to recover all monies paid hereunder following the occurrence of such Conflict of Interest or Disclosable Interest (the date of such occurrence to be determined in SERS' sole discretion), and CONSULTANT shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement or for any services which it may have provided since such occurrence. This remedy, if effected, shall not constitute the sole remedy afforded to SERS for such breach, nor shall it constitute a waiver of SERS' rights to claim damages or to take any other action provided for by law and/or pursuant to this Agreement.

15. Assignment or Other Transfer. CONSULTANT may not delegate any of its obligations hereunder, nor assign or otherwise transfer, in whole or in part, this Agreement, including any interest herein or any claim arising hereunder (whether voluntary or by operation of law, and/or whether by sale, merger, division, consolidation, encumbrance or sale of stock, or otherwise) to any subsidiary or affiliate of CONSULTANT, or any partnership, trust or other entity controlling, controlled by, or under common control with CONSULTANT, or to any other party or parties, without the prior written consent of SERS, which consent SERS may grant or withhold in its sole discretion. Any assignment or attempted assignment in contravention of this Section 15 shall be null and void *ab initio*.

16. Subcontracts. No agreement shall be made by CONSULTANT with any other person, firm or company for the furnishing or production of any of CONSULTANT's services described herein without the prior written consent of SERS. Such consent, in addition to any other writing, must be evidenced by a notation and dated signature of the Executive Director of SERS that appears on the first page or cover of any subcontract.

17. Commonwealth Contract Provisions. In performing services hereunder, CONSULTANT shall comply with the Commonwealth of Pennsylvania Standard Contract Terms and Conditions attached hereto and incorporated herein as Exhibit D. For purposes of Exhibit D, CONSULTANT shall be the "Contractor", and the Contractor shall be deemed not to have any "suppliers" or "subcontractors" (subject to the terms of Section 16 above).

18. Maintenance, Preservation and Review of Records. CONSULTANT shall maintain such records, books and accounts pertaining to services and payments hereunder in accordance with generally accepted accounting principles consistently applied. All such records, books and accounts shall be maintained and preserved during the term of this Agreement and any extension thereof, and for four (4) years thereafter. During such period, SERS or any other department or representative of the Commonwealth of Pennsylvania, from time to time upon reasonable notice, shall have the right to inspect, duplicate and audit such records, books and accounts for all purposes authorized and permitted by law. CONSULTANT may preserve such records, books and accounts in original form or on microfilm, magnetic tape, CD-ROM or any other generally recognized and accepted process.

19. Notices. Any notice, demand, direction, instruction and other communications required or permitted hereunder shall be confirmed in writing and shall be sufficiently given for all purposes when sent (a) by certified or registered U.S. mail, postage prepaid, (b) by a nationally recognized courier service that maintains written verification of actual delivery, (c) by facsimile or email (in the case of notices to SERS, to such email addresses as authorized and provided by SERS), with a copy of the communication sent by first class U.S. mail, postage prepaid (provided that if the date of dispatch is not a business day, the facsimile or email shall be deemed to have been received at the opening of business of the addressee on the next business day) or, (d) by delivering the same in person to either party at the following addresses or such other addresses as may be designated from time to time by the parties:

If to SERS:

COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT SYSTEM
30 North Third Street, Suite 150
Harrisburg, Pennsylvania 17101-1716
Attn: Executive Director
Facsimile: (717) 783-7300
Email: _____

With copies to:

Attn: Chief Investment Officer
Facsimile: (717) 772-3741
Email: _____

and

Attn: Chief Counsel
Facsimile: (717) 787-5751
Email: _____

If to CONSULTANT: _____

Facsimile: _____

Email: _____

For reports and other communications not required under the Agreement and/or covered under the notice provisions above, CONSULTANT may make such reports and other communications available to SERS in electronic form, such as via email or by posting same on a website (with notification of the posting by email to SERS), and SERS hereby consents to receive deliveries of such reports and other communications from CONSULTANT (including annual and other updates of CONSULTANT'S consumer privacy policies and procedures) exclusively in electronic form without separate mailing of paper copies, in each case in accordance with the provisions of this Section 19.

20. Expiration and Termination.

(a) *Expiration.* This Agreement shall expire five (5) years from the date first above written unless terminated earlier as provided herein.

(b) *Termination.* (1) CONSULTANT may terminate this Agreement by furnishing written notice to SERS not less than three hundred and sixty-five (365) days prior to the effective date of such desired termination, and SERS reserves the right to terminate this Agreement at any time, for any reason, by furnishing written notice to CONSULTANT, whereupon, and in either of such events, CONSULTANT'S fees shall be paid for work satisfactorily completed prior to the effective date of the termination; *provided that*, notwithstanding any other provision of this Agreement, SERS may withhold such payment of fees until CONSULTANT has fully complied, in SERS' sole discretion, with subsections (d) and (e) below; and (2) If CONSULTANT is unable to comply with a change requested by SERS pursuant to Section 7 of this Agreement, CONSULTANT may terminate this Agreement upon six (6) months' written notice, during which time CONSULTANT will be required to maintain the insurance/bond levels it had prior to SERS' change request. In no event shall CONSULTANT be entitled to recover any loss of profits.

(c) *Survival of Liability.* The termination or expiration of this Agreement shall not relieve CONSULTANT of any liability that may be incurred in connection with its services performed hereunder, or the failure to perform such services by CONSULTANT, which liability shall survive termination or expiration.

(d) *Final Report.* CONSULTANT shall furnish to SERS, within thirty (30) days of the effective date of termination, voidance and/or expiration of this Agreement, a final report on its activities and the status of the Fund's assets and/or _____ investment portfolio in such form and format as requested by SERS.

(e) *Forwarding of Documents.* CONSULTANT shall forward to SERS (or SERS' designated recipient), within thirty (30) days after the effective date of termination, voidance and/or expiration of this Agreement, all reports, projects, studies, or other documents and information (including the underlying data relating thereto) that relate to SERS and the Fund.

(f) *Access to Information.* SERS acknowledges that CONSULTANT requires certain information with respect to investments recommended to SERS pursuant to the terms of this Agreement in order to maintain its track record throughout the life of such investments. SERS hereby agrees to provide certain information reasonably requested by CONSULTANT in order to maintain such track record in accordance with applicable law and industry standards, and subject to Section 13 of this Agreement.

21. Applicable Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of Pennsylvania courts. CONSULTANT hereby (a) consents to the exclusive jurisdiction of any court of the Commonwealth of Pennsylvania, any federal courts in Pennsylvania, and the Board of Claims of the Commonwealth of Pennsylvania ("Board of Claims"), hereby waiving any claim or defense that such forum is not convenient or proper, and (b) agrees that any claim asserted against SERS pursuant to this Agreement shall only be brought before and subject to the exclusive jurisdiction of the Board of Claims pursuant to Section 1721 *et seq.* of Title 62 of Pa. Statutes. CONSULTANT hereby agrees that the Board of Claims and any such court provided in this Section 21 shall have *in personam* jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

22. Reservation of Immunities. SERS hereby reserves all immunities, defenses, rights or actions arising out of its status as an instrumentality of a sovereign state or entity, or under the Eleventh Amendment to the United States Constitution, and no waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by its entry into this Agreement, by any express or implied provision of this Agreement, or by any actions or omissions to act of SERS or any representative or agent of SERS, whether taken pursuant hereto or prior to or after SERS' entry into this Agreement.

23. Binding Effect. This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns.

24. Amendment. No amendment or modification of this Agreement, other than as set forth in Section 3 hereof, shall have any force or effect unless it is in writing and signed by the parties hereto.

25. Counterparts. This Agreement may be executed in any number of separate counterparts and delivered by mail, facsimile, or email with PDF signature pages,, each of which, when so executed and delivered, shall be deemed an original, and the several counterparts shall together constitute but one and the same instrument.

26. Severability. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be held contrary to any express provision of law, or contrary to the policy of express law though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the remainder of this Agreement or the rights of the parties hereto.

27. Headings. The headings and captions in this Agreement are for convenience and reference purposes only and shall not be construed or deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions hereof.

28. Entire Agreement. Except as hereinabove expressly provided, this Agreement (and any attachments thereto) supersedes all prior contracts and undertakings, written or oral, between the same parties concerning the same subject matter.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound hereby, have caused this Agreement for _____ Consulting Services to be executed as of the date first above written.

ATTEST:

Federal Tax Identification Number: _____

BY: _____
NAME: _____ Date
TITLE:BY: _____
NAME: _____ Date
TITLE:**COMMONWEALTH OF PENNSYLVANIA**
STATE EMPLOYEES' RETIREMENT SYSTEM
Federal Tax Identification Number: _____BY: _____
NAME: _____ Date
TITLE:

Approved for form and legality:

Approved:

NAME:
TITLE:
Office of Attorney General_____
NAME:
TITLE:
State Employees' Retirement System_____
NAME: _____ Date
TITLE:
Office of General Counsel

EXHIBIT A

[See the SERS Statement of Investment Policy, at
<http://sers.pa.gov/pdf/investments/InvestmentPolicyStatement.pdf>

EXHIBIT B

REQUIRED SERVICES

[As stated in the Request for Information, and subject to further negotiation]

EXHIBIT C

Fee Schedule for Consulting Services

Year 1	[Insert dates here]	\$
Year 2		\$
Year 3		\$
Year 4		\$
Year 5		\$

	Total for five years	\$

SERS' obligation and liability for payment of the foregoing fees is conditioned upon CONSULTANT's satisfactory performance of and compliance with the terms and conditions of the Agreement. The foregoing annual fees are payable by SERS to CONSULTANT in quarterly installments in arrears upon submission by CONSULTANT of an invoice satisfactory to SERS in form and substance. CONSULTANT shall endeavor to submit such invoices within the first two weeks of the month following the calendar quarter for which an invoice is due. SERS shall endeavor to process and provide for payment thereof within a reasonable time after such submission, in keeping with Commonwealth procedures for effecting such payments.

During any calendar quarter in which CONSULTANT's services are performed for only a portion of such calendar quarter, the foregoing fees shall be prorated. The numerator of the applicable fraction shall be the number of days during the calendar quarter on which CONSULTANT's services were performed for SERS and the denominator of such fraction shall be the total number of calendar days during such calendar quarter.

EXHIBIT D**STANDARD CONTRACT
TERMS AND CONDITIONS – PAPER CONTRACT****1. TERM OF CONTRACT**

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract. The Effective Date shall be fixed by the Contracting Officer after the Contract has been fully executed by the Contractor and by the Commonwealth and all approvals required by Commonwealth contracting procedures have been obtained. The Contract shall not be a legally binding contract until after the Effective Date is affixed and the fully-executed Contract has been sent to the Contractor. The Contracting Officer shall issue a written Notice to Proceed to the Contractor directing the Contractor to start performance on a date which is on or after the Effective Date. The Contractor shall not start the performance of any work prior to the date set forth in the Notice to Proceed and the Commonwealth shall not be liable to pay the Contractor for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No agency employee has the authority to verbally direct the commencement of any work under this Contract.

2. EXTENSION OF CONTRACT TERM

The Commonwealth reserves the right, upon notice to the Contractor, to extend the term of the Contract for up to three (3) months upon the same terms and conditions.

3. DEFINITIONS

As used in this Contract, these words shall have the following meanings:

- a. **Agency:** The department, board, commission or other agency of the Commonwealth of Pennsylvania listed as the Purchasing Agency. If a COSTARS entity or external procurement activity has issued an order against this contract, that entity shall also be identified as "Agency".
- b. **Contracting Officer:** The person authorized to administer this Contract for the Commonwealth and to make written determinations with respect to the Contract.
- c. **Days:** Unless specifically indicated otherwise, days mean calendar days.
- d. **Developed Works or Developed Materials:** All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, computer documentation, data, records, software, samples or any other tangible material without limitation authored or prepared by Contractor as the work product covered in the scope of work for the Project.
- e. **Documentation:** All materials required to support and convey information about the services required by this Contract. It includes, but is not necessarily restricted to, written reports and analyses, diagrams, maps, logical and physical designs, system designs, computer programs, flow charts, disks, and/or other machine-readable storage media.

- f. Services: All Contractor activity necessary to satisfy the Contract.

4. INDEPENDENT PRIME CONTRACTOR

In performing its obligations under the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the Commonwealth. The Contractor will be responsible for all services in this Contract whether or not Contractor provides them directly. Further, the Contractor is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

5. DELIVERY

- a. Supplies Delivery: All item(s) shall be delivered F.O.B. Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the Commonwealth. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in this contract, all item(s) must be delivered within the time period specified. Time is of the essence and, in addition to any other remedies, the Contract is subject to termination for failure to deliver as specified. Unless otherwise stated in this Contract, delivery must be made within thirty (30) days after the Effective Date.
- b. Delivery of Services: The Contractor shall proceed with all due diligence in the performance of the services with qualified personnel, in accordance with the completion criteria set forth in the Contract.

6. ESTIMATED QUANTITIES

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the Commonwealth and that the Commonwealth in accepting any bid or portion thereof, contracts only and agrees to purchase only the materials and services in such quantities as represent the actual requirements of the Commonwealth. The Commonwealth reserves the right to purchase materials and services covered under the Contract through a separate competitive procurement procedure, whenever Commonwealth deems it to be in its best interest.

7. WARRANTY

The Contractor warrants that all items furnished and all services performed by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. Unless otherwise stated in the Contract, all items are warranted for a period of one year following delivery by the Contractor and acceptance by the Commonwealth. The Contractor shall repair, replace or otherwise correct any problem with the delivered item. When an item is replaced, it shall be replaced with an item of equivalent or superior quality without any additional cost to the Commonwealth.

8. PATENT, COPYRIGHT, AND TRADEMARK INDEMNITY

The Contractor warrants that it is the sole owner or author of, or has entered into a suitable legal agreement concerning either: a) the design of any product or process provided or used in the performance of the Contract which is covered by a patent, copyright, or trademark registration or other right duly authorized by state or federal law or b) any copyrighted matter in any report document or other material provided to the commonwealth under the contract. The Contractor shall defend any suit or proceeding brought against the Commonwealth on account of any alleged patent, copyright or trademark infringement in the United States of any of the products provided or used in the performance of the Contract. This is upon condition that the Commonwealth shall provide prompt notification in writing of such suit or proceeding; full right, authorization and opportunity to conduct the defense thereof; and full information and all reasonable cooperation for the defense of same. As principles of governmental or public law are involved, the Commonwealth may participate in or choose to conduct, in its sole discretion, the defense of any such action. If information and assistance are furnished by the Commonwealth at the Contractor's written request, it shall be at the Contractor's expense, but the responsibility for such expense shall be only that within the Contractor's written authorization. The Contractor shall indemnify and hold the Commonwealth harmless from all damages, costs, and expenses, including attorney's fees that the Contractor or the Commonwealth may pay or incur by reason of any infringement or violation of the rights occurring to any holder of copyright, trademark, or patent interests and rights in any products provided or used in the performance of the Contract. If any of the products provided by the Contractor in such suit or proceeding are held to constitute infringement and the use is enjoined, the Contractor shall, at its own expense and at its option, either procure the right to continue use of such infringement products, replace them with non-infringement equal performance products or modify them so that they are no longer infringing. If the Contractor is unable to do any of the preceding, the Contractor agrees to remove all the equipment or software which are obtained contemporaneously with the infringing product, or, at the option of the Commonwealth, only those items of equipment or software which are held to be infringing, and to pay the Commonwealth: 1) any amounts paid by the Commonwealth towards the purchase of the product, less straight line depreciation; 2) any license fee paid by the Commonwealth for the use of any software, less an amount for the period of usage; and 3) the pro rata portion of any maintenance fee representing the time remaining in any period of maintenance paid for. The obligations of the Contractor under this paragraph continue without time limit. No costs or expenses shall be incurred for the account of the Contractor without its written consent.

9. OWNERSHIP RIGHTS

The Commonwealth shall have unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Commonwealth as part of the performance of the Contract.

10. ACCEPTANCE

No item(s) received by the Commonwealth shall be deemed accepted until the Commonwealth has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the

defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the Commonwealth within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the Commonwealth shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the Commonwealth's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails, neglects or refuses to do so, the Commonwealth shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the cost thereof to the Commonwealth.

11. PRODUCT CONFORMANCE

The Commonwealth reserves the right to require any and all Contractors to:

- a. Provide certified data from laboratory testing performed by the Contractor, or performed by an independent laboratory, as specified by the Commonwealth.
- b. Supply published manufacturer product documentation.
- c. Permit a Commonwealth representative to witness testing at the Contractor's location or at an independent laboratory.
- d. Complete a survey/questionnaire relating to the bid requirements and specifications.
- e. Provide customer references.
- f. Provide a product demonstration at a location near Harrisburg or the using agency location.

12. REJECTED MATERIAL NOT CONSIDERED ABANDONED

The Commonwealth shall have the right to not regard any rejected material as abandoned and to demand that the Contractor remove the rejected material from the premises within thirty (30) days of notification. The Contractor shall be responsible for removal of the rejected material as well as proper clean-up. If the Contractor fails or refuses to remove the rejected material as demanded by the Commonwealth, the Commonwealth may seek payment from, or set-off from any payments due to the Contractor under this or any other Contract with the Commonwealth, the costs of removal and clean-up. This is in addition to all other rights to recover costs incurred by the Commonwealth.

13. COMPLIANCE WITH LAW

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Contract.

14. ENVIRONMENTAL PROVISIONS

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations, including, but not limited to, the Clean Streams Law Act of June 22, 1937 (P.L. 1987, No. 394), as amended 35 P.S. § 691.601 et seq.; the Pennsylvania Solid Waste Management Act, Act of July 7, 1980 (P.L. 380, No. 97), as amended, 35 P.S. § 6018.101 et seq.; and the Dam Safety and Encroachment Act, Act of November 26, 1978 (P.L. 1375, No. 325), as amended, 32 P.S. § 693.1.

15. POST-CONSUMER RECYCLED CONTENT

- a. Except as specifically waived by the Department of General Services in writing, any products which are provided to the Commonwealth as a part of the performance of the Contract must meet the minimum percentage levels for total recycled content as specified on the Department of General Services website at www.dgs.state.pa.us on the date of submission of the bid, proposal or contract offer.
- b. Recycled Content Enforcement: The Contractor may be required, after delivery of the Contract item(s), to provide the Commonwealth with documentary evidence that the item(s) was in fact produced with the required minimum percentage of post-consumer and recovered material content.

16. COMPENSATION

- a. Compensation for Supplies: The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) that are delivered and accepted by the Commonwealth.
- b. Compensation for Services: The Contractor shall be required to perform the specified services at the price(s) quoted in the Contract. All services shall be performed within the time period(s) specified in the Contract. The Contractor shall be compensated only for work performed to the satisfaction of the Commonwealth. The Contractor shall not be allowed or paid travel or per diem expenses except as specifically set forth in the Contract.

17. BILLING REQUIREMENTS

Unless the Contractor has been authorized by the Commonwealth for Evaluated Receipt Settlement or Vendor Self-Invoicing, the Contractor shall include in all of its invoices the following minimum information:

- a. Vendor name and "Remit to" address, including SAP Vendor number;
- b. Bank routing information, if ACH;
- c. SAP Purchase Order number;
- d. Delivery Address, including name of Commonwealth agency;

- e. Description of the supplies/services delivered in accordance with SAP Purchase Order (include purchase order line number if possible);
- f. Quantity provided;
- g. Unit price;
- h. Price extension;
- i. Total price; and
- j. Delivery date of supplies or services.

If an invoice does not contain the minimum information set forth in this paragraph, the Commonwealth may return the invoice as improper. If the Commonwealth returns an invoice as improper, the time for processing a payment will be suspended until the Commonwealth receives a correct invoice. The Contractor may not receive payment until the Commonwealth has received a correct invoice.

Contractors are required to establish separate billing accounts with each using agency and invoice them directly. Each invoice shall be itemized with adequate detail and match the line item on the Purchase Order. In no instance shall any payment be made for services to the Contractor that are not in accordance with the prices on the Purchase Order, the Contract, updated price lists or any discounts negotiated by the purchasing agency.

18. PAYMENT

- a. The Commonwealth shall put forth reasonable efforts to make payment by the required payment date. The required payment date is: (a) the date on which payment is due under the terms of the Contract; (b) thirty (30) days after a proper invoice actually is received at the "Bill To" address if a date on which payment is due is not specified in the Contract (a "proper" invoice is not received until the Commonwealth accepts the service as satisfactorily performed); or (c) the payment date specified on the invoice if later than the dates established by (a) and (b) above. Payment may be delayed if the payment amount on an invoice is not based upon the price(s) as stated in the Contract. If any payment is not made within fifteen (15) days after the required payment date, the Commonwealth may pay interest as determined by the Secretary of Budget in accordance with Act No. 266 of 1982 and regulations promulgated pursuant thereto. Payment should not be construed by the Contractor as acceptance of the service performed by the Contractor. The Commonwealth reserves the right to conduct further testing and inspection after payment, but within a reasonable time after performance, and to reject the service if such post payment testing or inspection discloses a defect or a failure to meet specifications. The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

- b. The Commonwealth shall have the option of using the Commonwealth purchasing card to make purchases under the Contract or Purchase Order. The Commonwealth's purchasing card is similar to a credit card in that there will be a small fee which the Contractor will be required to pay and the Contractor will receive payment directly from the card issuer rather than the Commonwealth. Any and all fees related to this type of payment are the responsibility of the Contractor. In no case will the Commonwealth allow increases in prices to offset credit card fees paid by the Contractor or any other charges incurred by the Contractor, unless specifically stated in the terms of the Contract or Purchase Order.
- c. The Commonwealth will make contract payments through Automated Clearing House (ACH).
- 1) Within 10 days of award of the contract or purchase order, the contractor must submit or must have already submitted their ACH information within their user profile in the Commonwealth's procurement system (SRM).
 - 2) The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the contractor to properly apply the state agency's payment to the invoice submitted.
 - 3) It is the responsibility of the contractor to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

19. TAXES

The Commonwealth is exempt from all excise taxes imposed by the Internal Revenue Service and has accordingly registered with the Internal Revenue Service to make tax free purchases under Registration No. 23740001-K. With the exception of purchases of the following items, no exemption certificates are required and none will be issued: undyed diesel fuel, tires, trucks, gas guzzler emergency vehicles, and sports fishing equipment. The Commonwealth is also exempt from Pennsylvania state sales tax, local sales tax, public transportation assistance taxes and fees and vehicle rental tax. The Department of Revenue regulations provide that exemption certificates are not required for sales made to governmental entities and none will be issued. Nothing in this paragraph is meant to exempt a construction contractor from the payment of any of these taxes or fees which are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

20. ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the Commonwealth recognize that in actual economic practice, overcharges by the Contractor's suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Commonwealth. As part of the consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the Commonwealth all right, title and interest in and to any claims the

Contractor now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract.

21. COMMONWEALTH HELD HARMLESS

- a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in the defense of such suits.
- b. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

22. AUDIT PROVISIONS

The Commonwealth shall have the right, at reasonable times and at a site designated by the Commonwealth, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract. The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of three (3) years from date of final payment. The Contractor shall give full and free access to all records to the Commonwealth and/or their authorized representatives.

23. DEFAULT

- a. The Commonwealth may, subject to the Force Majeure provisions of this Contract, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in the Termination Provisions of this Contract) the whole or any part of this Contract or any Purchase Order for any of the following reasons:
 - 1) Failure to begin work within the time specified in the Contract or Purchase Order or as otherwise specified;

- 2) Failure to perform the work with sufficient labor, equipment, or material to insure the completion of the specified work in accordance with the Contract or Purchase Order terms;
 - 3) Unsatisfactory performance of the work;
 - 4) Failure to deliver the awarded item(s) within the time specified in the Contract or Purchase Order or as otherwise specified;
 - 5) Improper delivery;
 - 6) Failure to provide an item(s) which is in conformance with the specifications referenced in the Contract or Purchase Order;
 - 7) Delivery of a defective item;
 - 8) Failure or refusal to remove material, or remove and replace any work rejected as defective or unsatisfactory;
 - 9) Discontinuance of work without approval;
 - 10) Failure to resume work, which has been discontinued, within a reasonable time after notice to do so;
 - 11) Insolvency or bankruptcy;
 - 12) Assignment made for the benefit of creditors;
 - 13) Failure or refusal within 10 days after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due for materials furnished, labor supplied or performed, for equipment rentals, or for utility services rendered;
 - 14) Failure to protect, to repair, or to make good any damage or injury to property;
 - 15) Breach of any provision of the Contract;
 - 16) Failure to comply with representations made in the Contractor's bid/proposal; or
 - 17) Failure to comply with applicable industry standards, customs, and practice.
- b. In the event that the Commonwealth terminates this Contract or any Purchase Order in whole or in part as provided in Subparagraph a. above, the Commonwealth may procure, upon such terms and in such manner as it determines, items similar or identical to those so terminated, and the Contractor shall be liable to the Commonwealth for any reasonable excess costs for such similar or identical items included within the terminated part of the Contract or Purchase Order.

- c. If the Contract or a Purchase Order is terminated as provided in Subparagraph a. above, the Commonwealth, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the Commonwealth in the manner and to the extent directed by the Contracting Officer, such partially completed items, including, where applicable, reports, working papers and other documentation, as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract or Purchase Order as has been terminated. Except as provided below, payment for completed work accepted by the Commonwealth shall be at the Contract price. Except as provided below, payment for partially completed items including, where applicable, reports and working papers, delivered to and accepted by the Commonwealth shall be in an amount agreed upon by the Contractor and Contracting Officer. The Commonwealth may withhold from amounts otherwise due the Contractor for such completed or partially completed works, such sum as the Contracting Officer determines to be necessary to protect the Commonwealth against loss.
- d. The rights and remedies of the Commonwealth provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The Commonwealth's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the Commonwealth of its rights and remedies in regard to the event of default or any succeeding event of default.
- f. Following exhaustion of the Contractor's administrative remedies as set forth in the Contract Controversies Provision of the Contract, the Contractor's exclusive remedy shall be to seek damages in the Board of Claims.

24. FORCE MAJEURE

Neither party will incur any liability to the other if its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but aren't limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the Commonwealth orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may

elect to cancel the Contract, cancel the Purchase Order, or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Contractor, may suspend all or a portion of the Contract or Purchase Order.

25. TERMINATION PROVISIONS

The Commonwealth has the right to terminate this Contract or any Purchase Order for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **TERMINATION FOR CONVENIENCE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for its convenience if the Commonwealth determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.
- b. **NON-APPROPRIATION:** The Commonwealth's obligation to make payments during any Commonwealth fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. When funds (state and/or federal) are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Commonwealth shall have the right to terminate the Contract or a Purchase Order. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract. Such reimbursement shall not include loss of profit, loss of use of money, or administrative or overhead costs. The reimbursement amount may be paid from any appropriations available for that purpose.
- c. **TERMINATION FOR CAUSE:** The Commonwealth shall have the right to terminate the Contract or a Purchase Order for Contractor default under the Default Clause upon written notice to the Contractor. The Commonwealth shall also have the right, upon written notice to the Contractor, to terminate the Contract or a Purchase Order for other cause as specified in the Contract or by law. If it is later determined that the Commonwealth erred in terminating the Contract or a Purchase Order for cause, then, at the Commonwealth's discretion, the Contract or Purchase Order shall be deemed to have been terminated for convenience under Subparagraph a.

26. CONTRACT CONTROVERSIES

- a. In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the contracting officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within

sixty (60) days thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program.

- b. If the Contractor or the contracting officer requests mediation and the other party agrees, the contracting officer shall promptly make arrangements for mediation. Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required 120 days after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the contracting officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the contracting officer and the Contractor. The contracting officer shall send his/her written determination to the Contractor. If the contracting officer fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The contracting officer's determination shall be the final order of the purchasing agency.
- c. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Contractor may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Contractor shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the contracting officer and the Commonwealth shall compensate the Contractor pursuant to the terms of the Contract.

27. ASSIGNABILITY AND SUBCONTRACTING

- a. Subject to the terms and conditions of this Paragraph, this Contract shall be binding upon the parties and their respective successors and assigns.
- b. The Contractor shall not subcontract with any person or entity to perform all or any part of the work to be performed under this Contract without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- c. The Contractor may not assign, in whole or in part, this Contract or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of the Contracting Officer, which consent may be withheld at the sole and absolute discretion of the Contracting Officer.
- d. Notwithstanding the foregoing, the Contractor may, without the consent of the Contracting Officer, assign its rights to payment to be received under the Contract, provided that the Contractor provides written notice of such assignment to the Contracting Officer together with a written acknowledgement from the assignee that any such payments are subject to all of the terms and conditions of this Contract.

- e. For the purposes of this Contract, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, pledge, or other transfer of any ownership interest in the Contractor provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company.
- f. Any assignment consented to by the Contracting Officer shall be evidenced by a written assignment agreement executed by the Contractor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the Contract and to assume the duties, obligations, and responsibilities being assigned.
- g. A change of name by the Contractor, following which the Contractor’s federal identification number remains unchanged, shall not be considered to be an assignment hereunder. The Contractor shall give the Contracting Officer written notice of any such change of name.

28. OTHER CONTRACTORS

The Commonwealth may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other contractors and Commonwealth employees, and coordinate its work with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees. This paragraph shall be included in the Contracts of all contractors with which this Contractor will be required to cooperate. The Commonwealth shall equitably enforce this paragraph as to all contractors to prevent the imposition of unreasonable burdens on any contractor.

29. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

The Contractor agrees:

- a. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- b. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
- c. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.

- d. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- e. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- f. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- g. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- h. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
- i. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

- j. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

30. CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania ("Commonwealth") observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. DEFINITIONS. For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:

a. "Affiliate" means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

b. "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.

c. "Contractor" means the individual or entity, that has entered into this contract with the Commonwealth.

d. "Contractor Related Parties" means any affiliates of the Contractor and the Contractor's executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.

e. "Financial Interest" means either:

- (1) Ownership of more than a five percent interest in any business; or
- (2) Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.

f. "Gratuity" means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor's Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.

g. "Non-bid Basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:

a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.

b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.

c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.

d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:

- (1)** been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
- (2)** been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
- (3)** had any business license or professional license suspended or revoked;

- (4) had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and
- (5) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the

Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Office of the State Inspector

General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

31. CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

- a. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that

neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

- b. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
- c. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- d. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
- e. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- f. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

32. AMERICANS WITH DISABILITIES ACT

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, supplier, or grantee who will furnish or perform or seeks to furnish or

perform, good, supplies, services, construction or other activity, under a purchase order, contract, or grant with the Commonwealth.

- a. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
- b. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of subparagraph a above.

33. HAZARDOUS SUBSTANCES

The Contractor shall provide information to the Commonwealth about the identity and hazards of hazardous substances supplied or used by the Contractor in the performance of the Contract. The Contractor must comply with Act 159 of October 5, 1984, known as the "Worker and Community Right to Know Act" (the "Act") and the regulations promulgated pursuant thereto at 34 Pa. Code Section 301.1 et seq.

- a. Labeling. The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Act and the regulations) supplied by the Contractor is clearly labeled, tagged or marked with the information listed in Paragraph (1) through (4):
 - 1) Hazardous substances:
 - a) The chemical name or common name,
 - b) A hazard warning, and
 - c) The name, address, and telephone number of the manufacturer.
 - 2) Hazardous mixtures:
 - a) The common name, but if none exists, then the trade name,
 - b) The chemical or common name of special hazardous substances comprising .01% or more of the mixture,

- c) The chemical or common name of hazardous substances consisting 1.0% or more of the mixture,
- d) A hazard warning, and
- e) The name, address, and telephone number of the manufacturer.

3) Single chemicals:

- a) The chemical name or the common name,
- b) A hazard warning, if appropriate, and
- c) The name, address, and telephone number of the manufacturer.

4) Chemical Mixtures:

- a) The common name, but if none exists, then the trade name,
- b) A hazard warning, if appropriate,
- c) The name, address, and telephone number of the manufacturer, and
- d) The chemical name or common name of either the top five substances by volume or those substances consisting of 5.0% or more of the mixture.

A common name or trade name may be used only if the use of the name more easily or readily identifies the true nature of the hazardous substance, hazardous mixture, single chemical, or mixture involved.

Container labels shall provide a warning as to the specific nature of the hazard arising from the substance in the container.

The hazard warning shall be given in conformity with one of the nationally recognized and accepted systems of providing warnings, and hazard warnings shall be consistent with one or more of the recognized systems throughout the workplace. Examples are:

- NFPA 704, Identification of the Fire Hazards of Materials.
- National Paint and Coatings Association: Hazardous Materials Identification System.
- American Society for Testing and Materials, Safety Alert Pictorial Chart.
- American National Standard Institute, Inc., for the Precautionary Labeling of Hazardous Industrial Chemicals.

Labels must be legible and prominently affixed to and displayed on the product and the carton, container, or package so that employees can easily identify the substance or mixture present therein.

- b. Material Safety Data Sheet. The contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or

hazardous mixture. The Commonwealth must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the contractor shall provide an appropriate MSDS, if the manufacturer, importer, or supplier produces or possesses the MSDS. The contractor shall also notify the Commonwealth when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets may be attached to the carton, container, or package mailed to the Commonwealth at the time of shipment.

34. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commonwealth shall have the right to terminate the Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

35. APPLICABLE LAW

This Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall

have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

36. INTEGRATION

This Contract, including all referenced documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of either the Commonwealth or the Contractor has authority to make, or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

37. ORDER OF PRECEDENCE

In the event there is a conflict among the documents comprising this Contract, the Commonwealth and the Contractor agree on the following order of precedence: the Contract; the solicitation; and the Contractor's response to the solicitation.

38. CONTROLLING TERMS AND CONDITIONS

The terms and conditions of this Contract shall be the exclusive terms of agreement between the Contractor and the Commonwealth. All quotations requested and received from the Contractor are for obtaining firm pricing only. Other terms and conditions or additional terms and conditions included or referenced in the Contractor's quotations, invoices, business forms, or other documentation shall not become part of the parties' agreement and shall be disregarded by the parties, unenforceable by the Contractor and not binding on the Commonwealth.

39. CHANGES

The Commonwealth reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the services within the scope of the Contract; 3) to notify the Contractor that the Commonwealth is exercising any Contract renewal or extension option; or 4) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. Any such change shall be made by the Contracting Officer by notifying the Contractor in writing. The change shall be effective as of the date of the change, unless the notification of change specifies a later effective date. Such increases, decreases, changes, or modifications will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the service in accordance with the change order. Any dispute by the Contractor in regard to the performance required by any notification of change shall be handled through the Contract Controversies Provision.

40. BACKGROUND CHECKS

- a. The Contractor must, at its expense, arrange for a background check for each of its employees, as well as the employees of any of its subcontractors, who will have access to Commonwealth facilities, either through on-site access or through remote access. Background checks are to be conducted via the Request for Criminal Record Check form and procedure found at <http://www.psp.state.pa.us/psp/lib/psp/sp4-164.pdf>. The background check must be conducted prior to initial access and on an annual basis thereafter.
- b. Before the Commonwealth will permit access to the Contractor, the Contractor must provide written confirmation that the background checks have been conducted. If, at any time, it is discovered that a Contractor employee has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, or breach of trust/fiduciary responsibility or which raises concerns about building, system or personal security or is otherwise job-related, the Contractor shall not assign that employee to any Commonwealth facilities, shall remove any access privileges already given to the employee and shall not permit that employee remote access unless the Commonwealth consents to the

access, in writing, prior to the access. The Commonwealth may withhold its consent in its sole discretion. Failure of the Contractor to comply with the terms of this Section on more than one occasion or Contractor's failure to appropriately address any single failure to the satisfaction of the Commonwealth may result in the Contractor being deemed in default of its Contract.

- c. The Commonwealth specifically reserves the right of the Commonwealth to conduct background checks over and above that described herein.
- d. Access to certain Capitol Complex buildings and other state office buildings is controlled by means of card readers and secured visitors' entrances. Commonwealth contracted personnel who have regular and routine business in Commonwealth worksites may be issued a photo identification or access badge subject to the requirements of the contracting agency and DGS set forth in Enclosure 3 of Commonwealth Management Directive 625.10 (Amended) Card Reader and Emergency Response Access to Certain Capitol Complex Buildings and Other State Office Buildings. The requirements, policy and procedures include a processing fee payable by the Contractor for contracted personnel photo identification or access badges.

41. CONFIDENTIALITY

- a. The Contractor agrees to guard the confidentiality of the Commonwealth's confidential information with the same diligence with which it guards its own proprietary information. If the Contractor needs to disclose all or part of project materials to third parties to assist in the work or service performed for the Commonwealth, it may do so only if such third parties sign agreements containing substantially the same provisions as contained in this Section. The Commonwealth agrees to protect the confidentiality of Contractor's confidential information. In order for information to be deemed to be confidential, the party claiming confidentiality must designate the information as "confidential" in such a way as to give notice to the other party. The parties agree that such confidential information shall not be copied, in whole or in part, except when essential for authorized use under this Contract. Each copy of such confidential information shall be marked by the party making the copy with all confidentiality notices appearing in the original. Upon termination or cancellation of this Contract or any license granted hereunder, the receiving party will return to the disclosing party all copies of the confidential information in the receiving party's possession, other than one copy, which may be maintained for archival purposes only. Both parties agree that a material breach of these requirements may, after failure to cure within the time frame specified in this Contract, and at the discretion of the non-breaching party, result in termination for default.
- b. The obligations stated in this Section do not apply to information:
 - 1) already known to the recipient at the time of disclosure other than through the contractual relationship;
 - 2) independently generated by the recipient and not derived from the information supplied by the disclosing party;

- 3) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;
 - 4) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or
 - 5) required to be disclosed by the recipient by law, regulation, court order, or other legal process.
- c. There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how, or data processing techniques developed alone or jointly with the Commonwealth in connection with services provided to the Commonwealth under this Contract.

42. NOTICE

Any written notice to any party under this Contract shall be deemed sufficient if delivered personally, or by facsimile, telecopy, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., DHL, Federal Express, etc.) with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, and sent to following:

- a. If to the Contractor: the Contractor's address as recorded in the Commonwealth's Supplier Registration system.
- b. If to the Commonwealth: the address of the Issuing Office as set forth on the Contract.

43. RIGHT TO KNOW LAW

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Contract. For the purpose of these provisions, the term "the Commonwealth" shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor's assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor's assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Contractor shall:
 - 1) Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor's possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and

- 2) Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
 - e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
 - f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.
 - g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
 - h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
 - i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

44. ENHANCED MINIMUM WAGE PROVISIONS

- a. **Enhanced Minimum Wage.** Contractor/Lessor agrees to pay no less than \$15.00 per hour to its employees for all hours worked directly performing the services called for in this Contract/Lease, and for an employee's hours performing ancillary services necessary for the performance of the contracted services or lease when such employee spends at least twenty per cent (20%) of their time performing ancillary services in a given work week.
- b. **Adjustment.** Beginning July 1, 2023, and annually thereafter, the minimum wage rate shall be increased by an annual cost-of-living adjustment using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for Pennsylvania, New Jersey, Delaware, and Maryland. The applicable adjusted amount shall be published in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.
- c. **Exceptions.** These Enhanced Minimum Wage Provisions shall not apply to employees:
 1. exempt from the minimum wage under the Minimum Wage Act of 1968;
 2. covered by a collective bargaining agreement;
 3. required to be paid a higher wage under another state or federal law governing the services, including the Prevailing Wage Act and Davis-Bacon Act; or
 4. required to be paid a higher wage under any state or local policy or ordinance.
- d. **Notice.** Contractor/Lessor shall post these Enhanced Minimum Wage Provisions for the entire period of the contract conspicuously in easily-accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed.
- e. **Records.** Contractor/Lessor must maintain and, upon request and within the time periods requested by the Commonwealth, furnish all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.
- f. **Sanctions.** Failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but shall not be limited to, termination of the contract or lease, nonpayment, debarment or referral to the Office of General Counsel for appropriate civil or criminal referral.
- g. **Subcontractors.** Contractor/Lessor shall include the provisions of these Enhanced Minimum Wage Provisions in every subcontract so that these provisions will be binding upon each subcontractor.

SERS DATA AND INFORMATION SECURITY ADDENDUM

This Data and Information Security Addendum is incorporated within the Form of Standard Contract. The terms and provisions contained herein will be deemed accepted and will become a part of the contract(s) or purchase order(s) unless the response identifies an objection.

THIS DATA AND INFORMATION SECURITY ADDENDUM ("Addendum")

[Option #1 - forms part of a Purchase Order issued by the Commonwealth of Pennsylvania, State Employees' Retirement System ("SERS") to *[insert name of party with whom SERS is contracting]*, a *[insert jurisdiction of organization and type]* ("Contractor") and sets forth additional terms and conditions with respect to data and information security applicable to the Purchase Order and all agreements and other documents forming a part thereof, each as may be amended (collectively referred to herein as the "Agreement")]

[Option #2 - forms part of that certain *[insert the name of the agreement]* ("Agreement") made by and between the Commonwealth of Pennsylvania, State Employees' Retirement System ("SERS") and *[insert name of party with whom SERS is contracting]*, a *[insert jurisdiction of organization and type]* ("Contractor") and sets forth additional terms and conditions with respect to data and information security applicable to the Agreement.

RECITALS

WHEREAS, SERS and Contractor acknowledge that the Agreement will or may require (1) SERS to disclose certain data and information to Contractor, (ii) Contractor to accept, collect and/or use that data and information and (iii) Contractor to create data and information; and

WHEREAS, SERS and Contractor desire to agree to protect and provide for the privacy and confidentiality of all such data and information.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the mutual promises and undertakings hereinafter set forth, and the exchange of data and information pursuant to the Agreement and this Addendum, the parties hereto agree as follows:

1. Definitions. As used in this Addendum:

(a) "Applicable Standards" has the meaning specified in Section 2 (a) hereof.

(b) “Authorized Person” means a Contractor’s employee, contractor and any other individual or entity acting for Contractor who has (i) SERS’ authorization and (ii) a specific need for access to SERS’ Confidential Information to perform Contractor’s services for SERS. Contractor shall be deemed in control of all Authorized Persons.

(c) “Cloud Computing Services” means any computing service managed infrastructure regardless of deployment model (public, private, or hybrid) or type, such as, but not limited to, software-as-a-service (SaaS) for web-based applications, infrastructure-as-a-service (IaaS) for Internet-based access to storage and computing power, or platform-as-a-service (PaaS) that gives developers the tools to build and host Web applications, that is procured through and hosted by or within a third-party vendor, licensor, contractor, or supplier (“Service Organization”) or its subcontractor(s) (commonly referred to as “Subservice Organizations”). This term includes solutions deployed through traditional hosting methods and without the use of NIST Cloud capabilities (i.e., rapid elasticity, resource pooling, measured service, broad network access, and on demand self-service).

(d) “Cloud Use Case Review” means an established process to ensure the procurement and/or implementation of any Cloud Computing Service is aligned with SERS' overall business and intellectual technology vision, strategy, goals, and policies. This term includes representation and review from all domains to pro-actively identify, manage, and mitigate risk, if any, with the Cloud Computing Service being considered. The foregoing process requires that the Service Organization (third-party vendor, licensor, contractor, or supplier), must complete the Cloud Services Requirements (CSR) document provided by SERS that is specific to the Cloud Computing Service being considered. Any procurement or use of a Cloud Computing Service requires an approved cloud use case.

(e) “CONUS” means any state in the Continental United States and Hawaii.

(f) “Documentation” means all documentation related to the Services, including, if applicable, a SOW.

(g) “ISP” has the meaning specified in Section 3 (a) hereof.

(h) “Industry Standards” means any of the following: (i) National Institute of

Standards and Technology (NIST) 800 Series; (ii) NIST Cybersecurity Framework; and (iii) ISO 27001/2, the successor thereto or their generally recognized equivalents.

(i) “Multi-Factor Authentication” means the use of two or more of the authentication methods listed below. Two-factor employs two of the methods. Three-factor employs one each of all three methods:

- (i) something you know (e.g. PIN, password, shared information);
- (ii) something you possess (e.g. token, smart card, digital certificate); and
- (iii) something you are (biometrics - e.g. fingerprint, voice, iris, face).

(j) “SERS’ Confidential Information” means SERS’ Data that is not Public Data, including information containing personally identifiable information (commonly referred to as "PII"), protected health information (commonly referred to as "PHI"), and electronic protected health information (commonly referred to as "ePHI") as defined in regulations issued by the United States Department of Health and Human Services, investment portfolio information and trade secrets. Trade secrets include limited partnership agreements, side letters, private placement memoranda and similar information.

(k) “SERS’ Data” means any data or information that Contractor creates, obtains, accesses, receives from SERS or on behalf of SERS, hosts or uses in the course of its performance of the Agreement.

(l) “Public Data” means any specific data or information, regardless of form or format, that SERS has actively and intentionally disclosed, disseminated, or made available to the public.

(m) “Security Breach” has the meaning specified in Section 4 (b)(i) hereof.

(n) “Services” means the services described in the Agreement, and if applicable, any SOW.

(o) “SOW” means a statement of work made in relation to Services.

2. Data Security.

(a) Compliance. Contractor shall comply with and ensure that Services are provided under the Agreement in compliance with the requirements set forth in the following subparagraphs (i), (ii) and (iii) (individually and collectively referred to herein as the “Applicable Standards”):

(i) the Information Technology (“IT”) standards and policies issued by the Commonwealth of Pennsylvania Governor’s Office of Administration, Office for Information Technology (OA/OIT), as amended or restated and successor standard and policy (located at: <http://www.oa.pa.gov/Policies/Pages/itp.aspx>, and any replacement or successor site (referred to herein as the “COPA IT Site” and the standards and policies thereon the “COPA IT Standards”), including the accessibility standards set out in IT Bulletin ACC001, IT Accessibility Policy¹;

(ii) any applicable laws or regulations including:

(A) CJIS and CHRIA for criminal history data;

(B) HIPAA for health-related data;

(C) IRS Pub 1075 and SSA for federal protected data;

(D) PCI-DSS for financial data;

(E) Breach of Personal Information Notification Act, 2005 Pa. SB 712;

(F) Gramm-Leach-Bliley Act (15 U. S.C. § 6801, et seq.); and

(iii) Industry Standards (as defined above in Section 1(h)).

(b) Data Protection. To the extent that Contractor’s obligations under the Agreement involve creating, accessing, transmitting, maintaining, accepting, hosting or using SERS Data, Contractor shall preserve the confidentiality, integrity and availability of SERS’ Data by implementing and maintaining administrative, technical and physical controls that conform to Applicable Standards. Contractor shall implement security controls that provide a level of

¹ The COPA IT Site includes Information Technology Policy, Security Policy Requirements for Third Party Vendors, Number OPD-SECOOB. OPD-SEC000B is useful in navigating the COPA IT Standards.

security consistent with accepted information security standards which are commensurate with the sensitivity of the SERS' Data to be protected.

(c) Data Use and Access. Contractor shall use SERS' Data only and exclusively to support the performance of Services and not for any other purpose. With the exception of Public Data, absent SERS' prior written consent or as required by law, Contractor shall not disclose to or allow access to SERS' Data by any person, other than an Authorized Person in connection with the performance of Services and SERS' authorized employees and agents who have a need to know to perform their services for SERS. If such disclosure is required by law, Contractor shall notify SERS in writing before such disclosure, unless such notification is prohibited by law.

(d) Access to SERS' Specific Systems, Data and Services. Contractor shall limit access to SERS-specific systems, data and services, and provide access only, to Authorized Persons located within CONUS.

(e) Data Hosting. Contractor shall only host, store, or backup SERS' Data in physical locations within the CONUS.

(f) Multi-Factor Authentication. For services or applications exposed to the Internet, where sensitive data or information is stored, accessed, processed or transmitted, Contractor shall provide Multi-Factor Authentication for user authentication to the web application via workstation and mobile browsers. If a service is provided via mobile application, Contractor shall cause that application to be protected by Multi-Factor Authentication.

(g) Data Backup. If appropriate to protect the integrity and availability of SERS' Data in accordance with accepted industry practice, Contractor shall maintain (and cause any third-party hosting company that it uses to maintain) a means to backup and recover SERS' Data if that SERS' Data is lost, corrupted or destroyed. Contractor shall store backups offline to prevent modification or encryption by ransomware or other malicious software. SERS shall have the right to establish backup security for SERS' Data and to keep backup SERS' Data and SERS' Data files in its possession or control in SERS' sole discretion.

(h) Return of SERS' Data. Upon SERS' request, Contractor shall ensure that SERS can retrieve SERS' Data in the event Contractor is unable to continue providing Services for any reason or as a result of the termination of the Agreement. In the event of a termination and upon SERS' request, Contractor shall provide SERS' Data in a mutually acceptable format.

(i) Effect of Termination on SERS' Data Retention. Upon the first to occur of the termination of the Agreement for any reason or notice of such termination having been given, the provisions of this Subparagraph shall apply notwithstanding anything contained in the Agreement or this Addendum to the contrary. Unless otherwise directed by SERS' in writing, Contractor shall maintain SERS' Data and continue to extend the protections of the Agreement and this Addendum to such SERS' Data for a period of six (6) months at which point it shall return, and then upon SERS' written direction destroy, all SERS' Data received from SERS (or created or received by Contractor on behalf of SERS) regardless of form, and shall retain no copies of SERS' Data. Contractor shall certify in writing to SERS that these actions have been completed within thirty (30) days after receipt of SERS' direction to destroy. If return or destruction of SERS' Data is not feasible, Contractor shall (i) promptly inform SERS that the return or destruction, as applicable, is not feasible, (ii) continue to extend the protections of the Agreement and this Addendum to such SERS' Data and (iii) limit further use of SERS' Data to those purposes that make the return or destruction of SERS' Data infeasible.

(j) Destruction of SERS' Data. Subject to Subparagraph (i) above, Contractor shall erase, destroy, and/or render unrecoverable all SERS' Data in Contractor's possession or control that is no longer required for the performance of Services. Upon SERS' request, Contractor shall certify in writing that these actions have been completed within seven (7) days of SERS' request.

3. Contractor Security.

(a) Information Security Program. Contractor represents, acknowledges and agrees that Contractor has in place and will continue to maintain a formal information security program ("ISP") with written policies and procedures consistent with Industry Standards and reasonably designed to protect the confidentiality and integrity of SERS' Data when such SERS' Data is in the possession or control of Contractor. The ISP shall include administrative, technical, and physical safeguards. The safeguards shall appropriately: (i) relate to the type of

data and information concerned, (ii) be reasonably designed to maintain the integrity, confidentiality, and availability of the data and information; (iii) protect against anticipated threats or hazards to the security or integrity of the data and information; (iv) protect against unauthorized access to or use of the data and information that could result in substantial harm or inconvenience to SERS;

(v) provide for secure disposal of the data and information; and (vi) prescribe actions to be taken in the event that a security incident occurs or is suspected to have occurred.

(b) Contractor Personnel. Contractor hereby agrees that it shall only use Authorized Persons who are highly qualified in performing under the Agreement and have passed a background check. Contractor shall use the background check required under the COPA IT Standards for individuals described therein and for all others, a background check that is recognized under industry standards as appropriate to address the security concerns that apply to the specific individual and the services to be provided by the individual under the Agreement.

(c) Acceptance of Acceptable Use Policy. Contractor shall ensure that all Contractor personnel, including employees and contractors, who access or could access SERS' network as a part of performing under the Agreement, have agreed to SERS' Acceptable Use Policy as found in Management Directive 205.34, as it may be amended from time to time and any successor thereto (the current version being located at: https://www.oa.pa.gov/Policies/md/Documents/205_34.pdf) before such access.

(d) Security Awareness Training. Contractor shall ensure that its employees, agents, contractors, subcontractors are provided cybersecurity awareness education and are adequately trained to perform their information security-related duties and responsibilities consistent with Applicable Standards.

4. Documentation and Required Notification.

(a) Security Incident Handling. As part of the ISP, Contractor represents, acknowledges and agrees that Contractor has in place and will continue to maintain a documented security incident management process. The security incident management process shall:

(i) provide for the timely detection of security incidents and responses thereto; and

(ii) require the recordation of the applicable facts of each security incident and responses thereto, including the application or non-application of the security incident management process, escalation procedures and the responsibilities of each affected party.

(b) Notice to SERS and Response of Security Breach.

(i) Contractor shall notify by telephone SERS' Chief Information Security Officer at (717) 783-8094 and Chief Information Officer at (717) 237-0378 x8378 and by e-mail to SERS at ra-erhelpdesk@pa.gov.

(A) without undue delay and, in any event, within twenty-four (24) hours of first having knowledge of:

- (1) an unauthorized access, loss, alteration, theft or corruption of SERS' Data;
 - (2) any event that creates a substantial risk to the confidentiality, integrity or availability of SERS' Data;
 - (3) a breach of any of Contractor's security obligations under this Addendum;
 - (4) the occurrence of an event described in clauses (1) or (2) (without reference to SERS' Data) involving data or information other than SERS' Data if Contractor has not reasonably determined that such event will not be an event described in clause (1) or (2); or
 - (5) any other event requiring notification under applicable law (each of the events described in clauses (1) – (4) and this clause (5)) is hereinafter referred to as a "Security Breach";
- and

(B) within ten (10) days of having a suspicion that a Security Breach may have occurred unless after investigation appropriate to the suspicion during such ten (10) day period, Contractor has reasonably concluded that no Security Breach occurred.

SERS shall provide updated contact information to Contractor within ten (10) business days of any change to the SERS' contact information set forth

in this Subparagraph (i).

(ii) In the event of a Security Breach and as soon as practicable after first having knowledge of the Security Breach, Contractor shall:

(A) preserve forensic evidence and eliminate the cause of the risk or breach within Contractor's reasonable control; and

(B) undertake a thorough forensic investigation of any compromise or improper use and provide to SERS all information necessary to enable SERS to fully understand the nature and extent of the compromise or improper use to the extent known.

(iii) To the extent that the Security Breach is attributable to the actions or failure to act by Contractor or Authorized Persons or breach of this Addendum by Contractor or Authorized Persons, Contractor shall: (A) be liable for the cost of informing all such affected individuals in accordance with applicable law and (B) indemnify, hold harmless and defend SERS and its trustees, officers, and employees from and against any and all liabilities, claims, damages, losses, expenses, costs or other harm related to such Security Breach. As used herein, an "affected individual" shall include any individual who would be entitled to notice under the Breach of Personal Information Notification Act, Act of Dec. 22, 2005, P.L. 474, No 94, 73 P.S. Section 2301, as amended and enacted in the Commonwealth of Pennsylvania, if such individual was a resident of the Commonwealth of Pennsylvania. Contractor hereby agrees that it is doing business in the Commonwealth of Pennsylvania.

(c) Security Incident Investigations. Contractor hereby agrees to cooperate with SERS in investigating a security incident, as declared by SERS in SERS' sole discretion, and provide the names and contact information, of at least two (2) security contacts who shall respond to SERS in a timely manner, dependent on criticality, in the event that SERS must investigate a security incident. The current security contacts are:

Contact Names:		
Phone Numbers:		
Email Addresses:		

Contractor shall provide updated contact information to SERS within ten (10) business days of any change to the currently applicable security contact information provided to SERS.

5. Maintenance of Safeguards.

(a) Contractor shall maintain and follow Applicable Standards with respect to any of SERS' Confidential Information in Contractor's possession or control and protect such information against any loss, alteration, theft or corruption.

(b) At SERS' request, Contractor shall provide SERS with copies of its information security policies, processes, and procedures. Contractor shall notify SERS within ten (10) business days of any changes to its policies, processes or procedures that relate to the security of SERS' Data in Contractor's possession or control.

6. Information Security Audit.

(a) SERS' Right to Review ISP and Onsite Assessment. SERS shall have the right to review Contractor's ISP at any time that Contractor is subject to the terms of this Addendum. During the performance of the Services, on an ongoing basis annually and immediately in the event of a Security Breach, SERS, including its professional advisors and auditors, at its own expense, shall be entitled to perform, or to have performed, an on-site assessment of Contractor's ISP. Contractor hereby agrees that the assessment scope will address the services provided to SERS, including related people, process and technology.

(b) System and Organization Controls (SOC) Reporting. SERS shall have the right to review Contractor's ISP through Contractor's annual submission to SERS of its current SOC report(s) as required to be provided under this Addendum. Contractors shall submit: (i) a SOC 1 Type II report, if hosting financial information; (ii) a SOC 2 Type II report, if hosting, handling or processing SERS' Confidential Information; and (iii) a SOC for Cybersecurity Report if any of the following conditions exist: (A) reoccurring findings in SOC 1-Type II or SOC 2-Type II reports; (B) a cybersecurity incident or security breach has occurred; (C) cybersecurity incidents or breaches are not being detected, prevented, reported, and/or mitigated in a timely manner (as determined by SERS); (D) cybersecurity incidents or breaches are not being properly

managed by Contractor; (E) uncertainty that Contractor has an effective cybersecurity risk management program; (F) Contractor has been engaged in a merger or acquisition during the term of the Agreement; or (G) Contractor has restructured its service offerings and/or business model. Any report required to be provided hereunder shall document an assessment conducted by a qualified, independent third party. The assessment scope must address the services provided to SERS, including related people, process and technology.

(c) Assessment Questionnaire. Annually, Contractor hereby agrees to complete, within forty-five (45 days) of receipt of SERS' request, an assessment questionnaire provided by SERS regarding Contractor's ISP, including artifacts for a subset of controls.

7. Software Development Security. In the event that Contractor conducts application software development for SERS, Contractor shall: (a) either make source codes available for review by SERS or shall conduct source code scanning using a commercial security tool; (b) cause scans to be conducted annually and at any time significant code changes are made; (c) make scan reports available to SERS within two (2) weeks of execution; (d) disclose remediation timelines for high, medium and low risk security code defects; and (e) perform scans before code is implemented in production. Contractor hereby agrees that high risk security code defects may not be implemented in production without written approval from either SERS' Executive Director or a Deputy Executive Director.

8. Cloud Computing Services. Contractors shall meet the following requirements to the extent that Contractor provides Cloud Computing Services:

- (a) Cloud Use Case (CUC) Review. Contractor shall coordinate with SERS to complete the Cloud Services Requirements (CSR) as part of the CUC review process. Contractor hereby agrees that CUC review and approval is required prior to procurement or use of any Cloud Computing Service.

- (b) Monitoring and Audit Logging. Contractor shall ensure system monitoring and security audit logging is enabled and accessible to the SERS' Chief Information Security Officer or designee. Contractor shall: (i) provide monitoring (in addition, SERS recommends verbose logging); (ii) provide software with ability to correlate events and create security alerts; and (iii) maintain reports that are easily

accessible and in a readable format online for a minimum of 90 days and archived for a minimum of one (1) year.

- (c) Data Segmentation / Boundary Protection. Contractor shall provide a network/architecture diagram showing what technical controls are performing the network segmentation. If solution spans more than one hosting environment (such as integration to SERS' managed environments, or across multiple hosting providers), Contractor shall provide details on what solution components and data are deployed in which environment and (i) include border gateway, perimeter and/or network firewall, web application firewall, VPN tunnels, security zone access as applicable to the solution; (ii) describe data encryption methods at rest and in transit across environments; and (iii) include the direction of connectivity (specify whether initiated inbound, outbound, or both) and specifications for API calls, protocols, etc. Contractor shall describe how data segregation (physically or logically) of SERS' data from non-SERS data is guaranteed and maintain the diagram as long as Contractor is subject to the terms of this Addendum and provide updates if changes occur.
- (d) Exploit and Malware Protection. Contractor shall provide security controls required to identify attacks, identify changes to files, protect against malware, protect user web services, data loss prevention (DLP) and to perform forensic analysis. Contractor shall provide:
- (i) file Integrity Monitoring Controls;
 - (ii) Anti-Malware and Antivirus Controls;
 - (iii) Intrusion Detection System (IDS)/Intrusion Prevention System (IPS) Controls;
 - (iv) Data Loss Prevention (DLP) Controls;
 - (v) Forensic Controls; and
 - (vi) Advanced Persistent Threat (APT) Controls.
- (e) Encryption. Contractor shall enable industry standard strong encryption for all records involved with Software as a Service (SaaS) cloud services. Contractor shall provide technical controls with strong encryption to protect Data in Transit and Data at Rest.

- (f) Identity & Access Management. Contractor shall provide technical controls for authenticating users, provisioning and deprovisioning users, identity interaction and nonrepudiation needs for administrators, internet users and internal users. Multi-Factor Authentication (MFA) shall be implemented by the Contractor for users requiring direct access to any SERS' application from outside the Commonwealth of Pennsylvania network. Where possible, the Commonwealth of Pennsylvania's MFA solution shall be utilized.”
- (g) Vulnerability Assessment. Contractor shall ensure all cloud applications are securely coded, vetted and scanned. Contractor shall: (i) conduct a third-party independent vulnerability assessment annually or sooner if due to compliance regulations or other requirements, or upon a major change to the solution; (ii) provide vulnerability assessment results to SERS on an annual basis during the period the Contractor is subject to the terms of this Addendum; (iii) identify and validate vulnerabilities required for remediation; and iv) ensure patching is up to date.
- (h) Data Protection / Recovery. Upon SERS' request, Contractor shall provide business continuity plan that addresses:
- (i) Data/Database Recovery;
 - (ii) Application Recovery;
 - (iii) Operating System Recovery; and
 - (iv) Infrastructure Recovery.

In connection therewith, Contractor shall describe:

- (A) its capability to do a complete restoration in the event of a disaster; what tests are performed as part of its disaster recovery plan; and
- (B) its capability to provide services during a pandemic event.

- (i) Inventory. Contractor shall ensure a complete, accurate and up-to-date inventory of SERS' deployed resources within the cloud infrastructure and must be made available for review by SERS upon request.

9. Compliance with Applicable Federal, State and Local Laws. Contractor shall comply with all applicable federal, state, and local laws concerning data protection and privacy when handling SERS' Data.

10. Enforcing Compliance. Contractor shall enforce and be responsible for compliance by all its personnel and contractors with the provisions of this Addendum and all other confidentiality obligations owed to SERS.

11. Accommodation of Additional Protections. Contractor hereby agrees to comply with such additional protections as SERS shall reasonably request.

12. Termination. If SERS determines that the Contractor has breached any provision of this Addendum, such breach shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by SERS pursuant to the Agreement.

13. Indemnification. Contractor hereby agrees to indemnify, hold harmless and defend SERS from and against all claims, losses, liabilities, damages, judgments, costs and other expenses, including SERS's costs and attorney fees, incurred as a result of, or arising directly or indirectly out of or in connection with Contractor's failure to meet any of its obligations under this Addendum; and any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with Contractor's performance under this Addendum. Contractor hereby agrees that any limitations on Contractor's liability, regardless of conflicting language elsewhere in the Agreement, shall not apply to claims related to Contractor's breach of this Addendum.

14. Intellectual Property Infringement Indemnification. Contractor hereby agrees to indemnify, defend and hold SERS harmless from any and all claims brought against SERS alleging that the Services and/or Documentation or SERS' use of the Services and/or Documentation constitutes a misappropriation or infringement of intellectual property ("IP") of any third party. Contractor hereby agrees to be responsible for all costs or

expenses, to include reasonable attorneys' fees awarded or resulting from any claim. SERS shall, after receiving notice of a claim, advise Contractor of such notification. Limitations on Contractor's liability, regardless of conflicting language elsewhere in any Agreement, shall not apply to claims related to Contractor's misappropriation or infringement of another's intellectual property.

15. Contractor Liability Insurance. Contractor shall procure, and maintain for the duration of the Agreement and for such other period of time that Contractor is obligated under this Addendum to protect SERS' Data and SERS' system and services, insurance against claims and damages which may arise from or in connection with the performance of its work to include IP infringement and privacy or data breaches coverage. Coverage shall have limits of no less than \$5,000,000.00 per occurrence and \$10,000,000.00 aggregate.

16. Survival; Order of Precedence. Notwithstanding anything contained herein or the Agreement to the contrary, Contractor hereby acknowledges and agrees that the obligations imposed on Contractor under this Addendum shall (i) apply during the term of the Agreement, survive the termination of the Agreement for such other period of time as may be necessary to effectuate the intended purpose of protecting SERS' Data and SERS' systems and services, and (iii) in the event of any conflict with any term of the Agreement, the terms of this Addendum shall govern and take precedence.

17. Entire Agreement. The Agreement, including any exhibits and/or schedules thereto, and this Addendum contain the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

18. Notices. Except as provided in Section 4(b)(i) above, as to matters requiring notice covered by this Addendum, SERS and Client agree that the notice provisions in the Agreement shall apply.

19. Miscellaneous. The section headings contained in this Addendum are for convenience of reference purposes only and shall not affect the meaning or interpretation of this Addendum. If a conflict occurs between any obligation imposed on Contractor under this Addendum or the Agreement, the stricter requirement shall apply. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural. Usage of the term "including" in this Addendum shall be deemed to be followed by the phrase "without limitation" and shall be regarded as a

reference to nonexclusive and non-characterizing illustrations. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. A waiver is effective only in the specific instance and for the specific purpose for which it is given and shall not be deemed a waiver of any subsequent breach or default. No delay in exercising, failure to exercise, course of dealing with respect to, or partial exercise of any right or remedy shall constitute a waiver of another right or remedy, or future exercise thereof. This Addendum may be executed in any number of counterparts. Separate counterparts, each of which when so executed and delivered, shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. PDF copies of signatures and electronic signatures shall be deemed originals. Contractor may not assign any of its rights, duties or obligations under this Addendum without SERS' prior written consent. This Addendum and the obligations hereunder shall be interpreted, construed, and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any conflict of laws rules. If any term, covenant, or condition of this Addendum or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Addendum, or the application of such term, covenant, or condition to persons or circumstances other than to those to which is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition of this Addendum shall be valid and be enforced to the fullest extent permitted by law.