

REQUEST FOR PROPOSALS FOR

Tax Counsel Services

ISSUING OFFICE

**Pennsylvania State Employees' Retirement System
30 N. Third Street, Suite 150
Harrisburg, PA 17101-1716**

RFP NUMBER 23-024

DATE OF ISSUANCE

April 19, 2024

***Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) Participation:
The Issuing Office and the Department of General Services' Bureau of Diversity, Inclusion
and Small Business Opportunities (BDISBO) has not set Small Diverse Business (SDB)
and/or Veteran Business Enterprise (VBE) participation goals for this procurement.
Proposers are not required to submit SDB or VBE Proposals as part of this RFP.***

**REQUEST FOR PROPOSALS FOR
TAX COUNSEL SERVICES
RFP NUMBER 23-024**

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CALENDAR OF EVENTS

SERS will make every effort to adhere to the following schedule:

<i>Activity</i>	<i>Responsibility</i>	<i>Date</i>
Issue Request for Proposal	Issuing Office	April 19, 2024
Deadline to submit Questions via email to cgusler@pa.gov	Potential Offerors	April 26, 2024
Answers to Potential Offeror questions posted to eMarketplace at http://www.emarketplace.state.pa.us/Search.aspx no later than this date.	Issuing Office	May 2, 2024
Please monitor website for all communications regarding the RFP.	Potential Offerors	ONGOING
Sealed proposal must be received by the Issuing Office at: State Employees' Retirement System ATTN: Cathy Gusler 30 North 3 rd Street Harrisburg, PA 17101	Offerors	May 9, 2024 By Noon EDT
Interviews with Offerors (at discretion of Issuing Office)	Issuing Office/ Selected Offerors	May 30, 2024 – May 31, 2024
Contract Negotiations	Issuing Office/ Selected Offerors	Begin May 31, 2024
Award Contract	Issuing Office	June 28, 2024

PART I

GENERAL INFORMATION

1. Introduction

1.1 Purpose. This request for proposals (“RFP”) provides to those offerors interested in submitting proposals for the subject procurement (“Offerors”) sufficient information to enable them to prepare and submit proposals for consideration by the Commonwealth of Pennsylvania State Employees’ Retirement Board (“Board”) transacting business as the State Employees’ Retirement System (“SERS”) to satisfy a need for tax counsel services for the term of the contract (“Project”).

1.2 Overview. SERS is an independent agency of the Commonwealth of Pennsylvania created by statute to administer some of its related pension plans and funds with exclusive control and management responsibility. SERS is the Issuing Office for all four (4) plans listed below (“Issuing Office”). The Board currently serves as trustee of several retirement plans. These plans are:

- (1) the State Employees’ Retirement System, a qualified defined benefit governmental plan in accordance with §401(a) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereto (“DB Plan”), pursuant to and in accordance with the State Employees’ Retirement Code, 71 Pa. C.S. §§5101, *et seq.*;
- (2) the Benefits Completion Plan, a qualified governmental excess benefit arrangement in accordance with §415(m) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereto (“QGEBA Plan”), pursuant to and in accordance with 71 Pa. C.S. §5941;
- (3) the State Employees’ Defined Contribution Plan, a qualified in accordance with §401(a) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereto (“DC Plan”), pursuant to and in accordance with the State Employees’ Retirement Code, 71 Pa. C.S. §§5101, *et seq.*; and
- (4) the Commonwealth of Pennsylvania Deferred Compensation Program, a qualified plan in accordance with §457(b) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereto (“457(b) Plan”), pursuant to and in accordance with Act of November 6, 1987, P.L. 394, No. 81 (amending Act of March 30, 1811, P.L. 145, No. 99), as amended, and any other applicable state law.

The DB Plan, QGEBA Plan, the DC Plan, and the 457(b) Plan are collectively referred to as the “Plans”.

1.3 Scope. This RFP contains instructions governing the requested proposals, including the requirements for the information and material to be included; a description of the services to be provided; requirements which Offerors must meet to be eligible for consideration; general evaluation criteria; and other requirements specific to this RFP.

1.4 Overview of the Project.

A. General. The Issuing Office is seeking proposals to procure qualified tax counsel, with extensive experience in providing counsel on tax matters to statewide public pension systems, to provide sophisticated legal advice to the Board on federal and state tax and benefit issues and international tax matters related to the Board's investments on an as needed basis.

B. Specific.

1. Advise the Board on compliance with all tax qualification requirements pursuant to the Internal Revenue Code ("IRC").
2. Provide sophisticated legal advice on federal and state tax and benefit issues, including but not limited to providing advice relating to the Board's investments. With regards to the Board's non-US investments, provide advice on international tax matters.
3. Provide specific, written recommendations and strategies to achieve and maintain the qualified status of the Plans, including but not limited to, written recommendations on amendments to the Issuing Office's respective plan documents including statutes, policies, and procedures, to ensure the Plans are in full compliance with the IRC qualification criteria. This may include the preparation of and filing for a tax qualification determination letter for the DC Plan, as well as maintenance of the qualified statuses of the remaining Plans listed in Section 1.2.
4. Advise the Board concerning technical compliance of plan documents, including state laws, rules, administrative policies, and procedures for the Plans administered by the Board to achieve and maintain the qualified status of the Plans.
5. Advise the Board concerning the operational compliance of the Plans to maintain the qualified status of the Plans administered by the Board.
6. Advise the Board on ongoing tax compliance matters related to SERS and the Plans.
7. Prepare and file documents with the Internal Revenue Service ("IRS"), or other regulatory bodies, on behalf of the Plans.
8. Represent the Board before the IRS or other regulatory bodies as needed.

9. Present legal opinions concerning the reporting and taxation of qualified benefits and investment transactions including obtaining necessary opinions, private letter rulings, and other documents from the IRS, or other state or federal regulatory or governing bodies as requested by the Board.
10. Advise and provide legal analysis to the Board on proposed Commonwealth legislation that may have tax implications to the Board, the Plans, or members and participants of the Plans.
11. Advise and provide legal analysis to the Board on participating in the IRS' Employee Plans Compliance Resolutions System (EPCRS), including self-correction.
12. When requested, assist staff in the preparation of testimony related to tax issues before elected or appointed officials in the legislative and executive branch of government and be available to meet with such officials and testify as needed.
13. Attend Board and Board committee meetings at the request of the Board or the Executive Director of SERS.
14. Work closely with SERS' executive staff and the Chief Counsel's Office on tax-related issues.

The engagement may include other related work as designated by the Chief Counsel.

Additional detail is provided in **Part III** of this RFP.

1.5 Type of Contract. It is proposed that if the Issuing Office enters a contract as a result of this RFP, it will be a requirements contract with negotiated compensation containing the Commonwealth Standard Terms and Conditions as referenced and attached to the Standard Form Contract for Legal Services set forth in **Part V** of the RFP.

1.6 Rejection of Proposals. The Issuing Office reserves the right, in its sole and complete discretion, to reject any proposal or to reject all proposals received as a result of this RFP.

1.7 Incurring Costs. The Issuing Office is not liable for any costs the Offeror incurs in preparation and submission of its proposal, in participating in the RFP process, or in anticipation of award of the contract.

1.8 Questions & Answers. If an Offeror has any questions regarding this RFP, the Offeror must submit the questions by email (**with the subject line "RFP NUMBER 23-024 Question"**) to the Issuing Officer named in the Calendar of Events of the RFP. If the Offeror has questions, they may be submitted as they arise via email, but **no later than** the date indicated on the Calendar of Events, as it may be amended from time to time. The Issuing Officer shall post the answers to the questions to eMarketplace at [PA - eMarketplace \(state.pa.us\)](http://PA - eMarketplace (state.pa.us)) on an ongoing basis until the deadline stated on the Calendar of Events. When an Offeror submits a question after the deadline date for receipt of questions indicated on the Calendar of Events, the Issuing Officer may respond

to questions of an administrative nature by directing the questioning Offeror to specific provisions in the RFP. To the extent that the Issuing Office decides to respond to a non-administrative question after the deadline date, the question and answer will be provided to all Offerors through an addendum.

All questions and responses as posted to eMarketplace are considered as an addendum to, and part of, this RFP in accordance with RFP **Part I, Section 1.9**. Each Offeror shall be responsible to monitor eMarketplace for new or revised RFP information. The Issuing Office shall not be bound by any verbal information, nor shall it be bound by any written information that is not either contained within the RFP or formally issued as an addendum by the Issuing Office. The Issuing Office does not consider questions to be a protest of the specifications or of the solicitation. The required protest process for Commonwealth procurements is described in **Part I, Section 1.24**.

1.9 Addenda to the RFP. If the Issuing Office deems it necessary to revise any part of this RFP before the proposal response date, the Issuing Office will post an addendum to eMarketplace at [PA - eMarketplace \(state.pa.us\)](http://PA - eMarketplace (state.pa.us)). It is the Offeror's responsibility to periodically check eMarketplace for any new information or addenda to the RFP. Answers to the questions asked during the Questions & Answers period also will be posted to eMarketplace as addenda to the RFP.

1.10 Response Date. To be considered for selection, proposal submissions must arrive at the Issuing Office on or before the time and date specified in the RFP Calendar of Events. The Issuing Office will **not** accept proposals via email or facsimile transmission. Offerors who send proposals by mail or other delivery service should allow sufficient delivery time to ensure timely receipt of their proposals. If, due to inclement weather, natural disaster, or any other cause, the office location to which proposals are to be returned is closed on the proposal response date, the deadline for submission will be automatically extended until the next business day on which the office is open, unless the Issuing Office otherwise notifies Offerors. The hour for submission of proposals shall remain the same. The Issuing Office will reject (unopened) any late proposals.

1.11 Proposal Requirements.

A. Proposal Submission: To be considered, Offerors should submit the following:

1. A complete response to this RFP to the Issuing Office, using the format provided in Section 1.11(B). The Offeror must provide its proposal in two separate submissions: the first submission shall include one original and twelve (12) paper copies of the Technical Submittal. The second submission shall be one paper original Cost Submittal; and

2. In addition to the paper proposal referenced in (1) above, Offerors must submit one complete and exact electronic copy of the entire proposal (Technical Submittal and the Cost Submittal) on a flash drive in Microsoft Office or Microsoft Office-compatible format. The Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the Flash drive before it was submitted.

Offerors should ensure that there is **no cost information in the Technical Submittal**. Offerors should not reiterate technical information in the cost submittal. The Offeror shall make no other distribution of its proposal to any other Offeror or Commonwealth official. Each proposal page should be numbered for ease of reference. A person authorized to bind the Offeror to its provisions must sign the proposal. If the official signs the Proposal Cover Sheet (**Appendix A** to this RFP) and the Proposal Cover Sheet is attached to the Offeror's proposal, the requirement will be met. For this RFP, the proposal must remain valid for **120** days or until a contract is fully executed. If the Issuing Office selects the Offeror's proposal for award, the contents of the selected Offeror's proposal will become, except to the extent the contents are changed through negotiations, contractual obligations.

Each Offeror submitting a proposal specifically waives any right to withdraw or modify it, except that the Offeror may withdraw its proposal by written notice received at the Issuing Office's address for proposal delivery prior to the exact hour and date specified for proposal receipt. An Offeror may modify its submitted proposal prior to the exact hour and date set for proposal receipt only by submitting a new sealed proposal or sealed modification which complies with the RFP requirements.

B. Proposal Format: Offerors must submit their proposals in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all proposal requirements. Each proposal shall consist of the following **two** separately sealed submittals:

1. Technical Submittal, in response to **Part III**:
 - a. Complete, sign and include **Appendix B, Domestic Workforce Utilization Certification**; and
 - b. Complete, sign and include **Appendix C, Trade Secret Confidential Propriety Information Notice Form**, if applicable (see 1.16 C.); and
 - c. Complete, sign and include **Appendix D, Worker Protection and Investment Certification Form**.
2. Cost Submittal, in response to RFP **Part IV**.

The Issuing Office reserves the right to request additional information which, in the Issuing Office's opinion, is necessary to assure that the Offeror's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Issuing Office may make investigations as deemed necessary to determine the ability of the Offeror to perform the Project, and the Offeror shall furnish to the Issuing Office all requested information and data. The Issuing Office reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Offeror fails to satisfy the Issuing Office that such Offeror

is properly qualified to carry out the obligations of the RFP and to complete the Project as specified.

1.12 Economy of Preparation. Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's ability to meet the requirements of the RFP.

1.13 No Alternate Proposals. The Issuing Office has identified the basic approach to meeting its requirements, allowing Offerors to be creative and propose their best solution to meeting these requirements. The Issuing Office will not accept alternate proposals.

1.14 Discussions for Clarification. Offerors may be required to make an oral or written clarification of their proposals to the Issuing Office to ensure thorough mutual understanding and responsiveness to the solicitation requirements. The Issuing Office will initiate requests for clarification. Clarifications may occur at any stage of the evaluation and selection process prior to contract execution.

1.15 Prime Contractor Responsibilities. The contract will require the selected Offeror to assume responsibility for all services offered in its proposal whether it produces them itself or by subcontract. Further, the Issuing Office will consider the selected Offeror to be the sole point of contact with regard to all contractual matters.

1.16 Proposal Contents.

- A. **Confidential Information.** SERS is not requesting, and does not require, confidential proprietary information or trade secrets to be included as part of Offerors' submissions in order to evaluate proposals submitted in response to this RFP. Accordingly, except as provided herein, Offerors should not label proposal submissions as confidential or proprietary or trade secret protected. Any Offeror who determines that it must divulge such information as part of its proposal must submit the signed written statement described in subsection C below and must additionally provide a redacted version of its proposal, which removes only the confidential proprietary information and trade secrets, for required public disclosure purposes.
- B. **SERS Use.** All material submitted with the proposal shall be considered the property of SERS. SERS has the right to use any or all ideas not protected by intellectual property rights that are presented in any proposal regardless of whether the proposal becomes part of a contract. Notwithstanding any Offeror copyright designations contained in proposals, SERS shall have the right to make copies and distribute proposals internally and to comply with public record or other disclosure requirements under the provisions of any Commonwealth or United States statute or regulation, or rule or order of any court of competent jurisdiction.
- C. **Public Disclosure.** After the award of a contract pursuant to this RFP, all proposal submissions are subject to disclosure in response to a request for public records made under the Pennsylvania Right-to-Know-Law, 65 P.S. §67.101, *et seq.* If a proposal

submission contains confidential proprietary information or trade secrets, a signed written statement to this effect must be provided with the submission in accordance with 65 P.S. §67.707(b) for the information to be considered exempt under 65 P.S. §67.708(b)(11) from public records requests. Refer to **Appendix C** of the RFP for a **Trade Secret Confidential Proprietary Information Notice Form** that may be utilized as the signed written statement, if applicable.

1.17 News Releases. Offerors shall not issue news releases, internet postings, advertisements, or any other public communications pertaining to this RFP, the Proposals submitted or the subject matter therein without prior written approval of the Issuing Office, and then only in coordination with the Issuing Office.

1.18 Restriction of Contact. From the issue date of this RFP until the Issuing Office selects a proposal for negotiation, the Issuing Officer is the sole point of contact for Offerors concerning this RFP. When a proposal has been selected for negotiation, that Offeror may be contacted by the Chief Counsel's Office for negotiation. Any violation of this condition may be cause for the Issuing Office to reject the offending Offeror's proposal. If the Issuing Office later discovers that the Offeror has engaged in any violations of this condition, the Issuing Office may reject the offending Offeror's proposal or rescind its contract award. Offerors must agree not to distribute any part of their proposals beyond the Issuing Office. An Offeror who shares information contained in its proposal with other SERS personnel and/or competing Offeror personnel may be disqualified.

1.19 Issuing Office Participation. Offerors shall provide all services, supplies, facilities, and other support necessary to complete the identified work, except as otherwise provided in this Section 1.19. The Issuing Office will not provide office space or logistical support.

1.20 Term of Contract. The term of the contract will commence on the Effective Date and will end five (5) years from the Effective Date. The Issuing Office will fix the Effective Date after the contract has been fully executed by the selected Offeror and by the Issuing Office and all approvals required by Commonwealth contracting procedures have been obtained. The selected Offeror shall not start the performance of any work prior to the Effective Date of the contract and SERS shall not be liable to pay the selected Offeror for any service or work performed or expenses incurred before the Effective Date of the contract. Additionally, the Board reserves the right, upon notice to the Law Firm, to extend the Contract for up to three (3) months pursuant to the same terms and conditions.

1.21 Offeror's Representations and Authorizations. By submitting its proposal, each Offeror understands, represents, and acknowledges that:

- A. All of the Offeror's information and representations in the proposal are material and important, and the Issuing Office may rely upon the contents of the proposal in awarding the contract(s). The Issuing Office shall treat any misstatement, omission, or misrepresentation as fraudulent concealment of the true facts relating to the Proposal submission, punishable pursuant to 18 Pa.C.S. §4904.

- B.** The Offeror has arrived at the price(s) and amounts in its cost submittal independently and without consultation, communication, or agreement with any other Offeror or potential offeror.
- C.** The Offeror has not disclosed the price(s), the amount of the cost submittal, nor the approximate price(s) or amount(s) of its cost submittal to any other firm or person who is an Offeror or potential offeror for this RFP, and the Offeror shall not disclose any of these items on or before the cost submittal deadline specified in the Calendar of Events of this RFP.
- D.** The Offeror has not attempted, nor will it attempt, to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a cost submittal higher than this proposal, or to submit any intentionally high or noncompetitive cost submittal or other form of complementary proposal.
- E.** The Offeror makes its proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- F.** To the best knowledge of the person signing the proposal for the Offeror, the Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last **four** years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as the Offeror has disclosed in its proposal.
- G.** To the best of the knowledge of the person signing the proposal for the Offeror and except as the Offeror has otherwise disclosed in its proposal, the Offeror has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Offeror that is owed to the Commonwealth.
- H.** The Offeror is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the Offeror cannot so certify, then it shall submit along with its proposal a written explanation of why it cannot make such certification.
- I.** The Offeror has not made, under separate contract with the Issuing Office, any recommendations to the Issuing Office concerning the need for the services described in its proposal or the specifications for the services described in the proposal.
- J.** Each Offeror, by submitting its proposal, authorizes Commonwealth agencies to release to the Commonwealth information concerning the Offeror's Pennsylvania taxes, unemployment compensation, and workers' compensation liabilities.

- K.** Until the selected Offeror receives a fully executed and approved written contract from the Issuing Office, there is no legal and valid contract, in law or in equity, and the Offeror shall not begin to perform.
- L.** The Offeror is not currently engaged and will not during the duration of the contract engage, in a boycott of a person or an entity based in or doing business with a jurisdiction which the Commonwealth is not prohibited by Congressional statute from engaging in trade or commerce.

1.22 Notification of Selection.

- A. Contract Negotiations.** The Issuing Office will notify all Offerors in writing of the Offeror selected for contract negotiations after the Issuing Office has determined, taking into consideration all of the evaluation factors, the proposal that is the most advantageous to the Issuing Office.
- B. Award.** Offerors whose proposals are not selected will be notified when contract negotiations have been successfully completed and the Issuing Office has received the final negotiated contract signed by the selected Offeror.

1.23 Debriefing Conferences. Upon notification of award, Offerors whose proposals were not selected will be given the opportunity to be debriefed. The Issuing Office will schedule the debriefing at a mutually agreeable time. The debriefing will not compare the Offeror with other Offerors, other than the position of the Offeror's proposal in relation to all other Offeror proposals. An Offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest (See **Section 1.24** of this RFP).

1.24 RFP Protest Procedure. The RFP Protest Procedure is on the Department of General Services ("DGS") website at [Pt I Ch 58 Bid Protests.pdf \(pa.gov\)](#). A protest by a party that has not or has not yet submitted a proposal must be filed no later than the proposal submission deadline specified in the Calendar of Events of the RFP. Offerors may file a protest within **seven** days after the protesting Offeror knew or should have known of the facts giving rise to the protest, but in no event may an Offeror file a protest later than **seven** days after the date the notice of award of the contract is posted on the DGS website. The date of filing is the date of receipt of the protest. A protest must be filed in writing with the Issuing Office. To be timely, the protest must be received by 4:00 p.m. on the seventh day.

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PART II

CRITERIA FOR SELECTION

2.1 Mandatory Responsiveness Requirements. The Offeror must meet all the mandatory requirements to be given further consideration. Failure to satisfy each of the minimum requirements below will result in the immediate rejection of the proposal.

To be eligible for selection, a proposal must:

- A. Be timely received from an Offeror;
- B. Be properly signed by the Offeror on the Proposal Cover Sheet. See **Appendix A, Proposal Cover Sheet**;
- C. Consist of the following **two, separately attached and sealed**, submittals:
 - 1. Technical Submittal, which shall be a response to Part III of this RFP; and
 - 2. Cost Submittal, in response to Part IV of this RFP. The Cost Submittal will not be scored but it may be used by the Issuing Office in negotiations.
- D. Include one complete and exact electronic copy of the entire proposal (Technical Submittal and the Cost Submittal) on a flash drive in Microsoft Office or Microsoft Office-compatible format. The Flash drive should clearly identify the Offeror and include the name and version number of the virus scanning software that was used to scan the Flash drive before it was submitted.

2.2 Technical Nonconforming Proposals. The four (4) Mandatory Responsiveness Requirements set forth in 2.1 above are the only RFP requirements that SERS will consider to be *non-waivable*. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in an Offeror's proposal, (2) allow the Offeror to cure the nonconformity, or (3) consider the nonconformity in the scoring of the Offeror's proposal.

2.3 Evaluation. The Issuing Office will select a committee of qualified personnel to review and evaluate timely submitted proposals ("Evaluation Committee"). The Issuing Office will provide written notice to the responsible Offeror whose proposal is determined to be the most advantageous to SERS as determined by the Issuing Office after taking into consideration all of the evaluation factors. The Issuing Office shall then commence contract negotiations with such Offeror.

2.4 Evaluation Criteria. The following criteria will be used in evaluating each proposal:

- A. **Technical:** The Issuing Office has established the weight for the Technical criterion for this RFP as 100% of the total points. Evaluation will be based upon the following:
 - i. Understanding the Project;
 - ii. Offeror's Qualifications;
 - iii. Offeror's Personnel Qualifications; and
 - iv. Soundness of Approach.

As part of your technical submission, provide a narrative demonstrating the Offeror's knowledge of the areas of law and experience relevant to the engagement at issue as well as an analysis of the Offeror's plan of action consistent with the project overview and the Statement of Work. Offerors should also highlight their knowledge of SERS.

- B. Cost:** This is a professional services RFP issued pursuant to 62 Pa. C.S. §518, Competitive Selection Procedures for Certain Services. This Procurement section is applicable because the Board is seeking attorney services. Pursuant to 62 Pa. C.S. §518, cost is not a factor in determining the most qualified bidder; cost will be negotiated after completion of the technical evaluation scoring. Specifically, Section 62 Pa. C.S. §518(e) provides:

Award. - - Award shall be made to the responsible offeror determined in writing by the contracting officer to be best qualified based on the evaluation factors set forth in the request for proposals. Fair and reasonable compensation shall be determined through negotiation. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror. If proposals were submitted by one or more other responsible offerors, negotiations may be conducted with the other responsible offeror or responsible offerors in the order of their respective qualification ranking. The contract may be awarded to the responsible offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
62 Pa.C.S. §518(e).

2.5 Offeror Responsibility. To be responsible for purposes of this engagement, an Offeror must submit a responsive proposal and possess the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance of the contract.

- A.** In order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations, the total score for the technical submittal of the Offeror's proposal must be greater than or equal to **75%** of the **available technical points**. Should an Offeror's proposal not receive a score greater than or equal to 75% of the available technical points, the Offeror will not be considered responsible solely for the purposes of this RFP, and the Offeror will not be considered for award of this contract.
- B.** Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of Commonwealth Management Directive 215.9, Contractor Responsibility Program.

2.6 Final Ranking and Award.

- A.** After any discussions conducted with responsible Offerors, the Issuing Office will rank responsible Offerors according to the final technical total overall score assigned to each.
- B.** The Issuing Office must select for contract negotiations the Offeror with the highest technical score. The Issuing Office will then negotiate fair and reasonable compensation with the selected Offeror. If negotiations fail to result in what the Issuing Office believes to be fair and reasonable compensation, then the Issuing Office will proceed to negotiate with the Offeror having the next highest technical score until the Issuing Office can agree to terms for fair and reasonable compensation with one of the Offerors. *See* 62 Pa. C.S.§518(e).
- C.** The Issuing Office has the discretion to reject all proposals or cancel the request for proposals at any time prior to the time a contract is fully executed when it is in the best interests of SERS. The reasons for the rejection or cancellation shall be made part of the contract file.

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PART III

TECHNICAL PROPOSAL

3.1 Statement of Work.

General. The purpose of this Statement of Work is to provide an overview of the engagement envisioned as a result of this RFP. Interested Offerors should use this statement of work in its technical proposal.

The successful Offeror shall represent the Board in providing counsel on tax matters relating to the Board's administration of the Plans, to provide sophisticated legal advice to the Board on federal and state tax and benefit issues and international tax matters related to the Board's investments on an as needed basis. Without limiting the generality of the foregoing, the Offeror understands that its role as the Board's counsel is likely to encompass legal advice, as well as strategic considerations, communications, and related services (collectively "legal and advisory services") regarding the types of actions discussed above and in Part 1.4 of this RFP.

The successful Offeror shall consult with SERS Chief Counsel on legal issues involved in the matters referred to in Part 1.4, this Part 3.1, and in other matters requested by the SERS Chief Counsel.

3.2 Qualifications. The Offerors shall address each qualification requirement set forth in Appendix E, Statement of Qualifications/Conflicts/Technical Questionnaire

A. Experience. Indicate experience in areas defined in Section 3.1, including a description of public pension plan clients you currently have or may have had in the past.

Offeror Response

B. Key Personnel. Include the number of attorneys who will be engaged in the work. Show where these personnel will be physically located. Include each attorney's name and, through a resume or similar document, the attorney's education, and experience. Key project staffing changes must be approved by the Issuing Office. The Issuing Office reserves the rights to request, at its sole discretion, that the selected Offeror remove and replace counsel or staff from the Project.

Offeror Response

C. Conflicts of Interest. Describe any real, potential, or perceived conflicts of interest arising from the Law Firm's relationships with or representation of other parties. **A conflict shall include, but is not limited to, the representation of any party in a matter adverse to SERS, the Board, any Commonwealth agency, or the Commonwealth.** This includes real, potential, or perceived conflicts for any proposed subcontractor. Offerors shall:

1. Provide sufficient facts, legal implications, and possible effects for any matter as described above so that the Issuing Office may evaluate the significance of each potential conflict; and
2. Represent and warrant that the Law Firm shall not undertake any representation that conflicts with the performance of the services or obligations as described hereunder unless such conflicting representation has been fully disclosed to and waived by the Board. Any and all conflicting representation shall be promptly disclosed to SERS Chief Counsel.

The Issuing Office reserves the right to reject any Proposal based on conflicting representation.

Offeror Response

D. Ongoing Compliance with Qualifications; Removals. The Issuing Office may reject an Offeror's proposal, or remove or suspend the Offeror for reasons that include, but are not limited to:

1. Unprofessional performance;
2. Being the subject of disciplinary/licensing actions by the Pennsylvania Supreme Court or any other jurisdiction with disciplinary or licensing authority over Offeror or any of Offeror's personnel assigned to the Project;
3. Voluntary or involuntary filing for protection under federal or state bankruptcy laws;
4. Failure to continue to meet the requirements of this RFP;
5. Failure to pay federal, state and/or local taxes; or
6. Conflicts of interest.

3.3 Tasks.

A. Legal Services. The selected Offeror shall provide legal services and perform all tasks necessary to successfully represent the Board as set forth in this Part III.

B. Contract Close Out. Prior to close out or termination of the contract, the selected Offeror shall cooperate with the Issuing Office and any subsequent Offeror(s) in any activities related to the transition/turnover of responsibilities.

3.4 Reports and Project Control.

The selected Offeror shall prepare and submit at the request of the Board, subject to attorney-client and other applicable privileges, memoranda of law and other documents related to the services performed for this Project.

PART IV COST SUBMITTAL

4.1 Cost Submittal

This is a professional services RFP issued pursuant to 62 Pa. C.S. §518, Competitive Selection Procedures for Certain Services. This Procurement section is applicable because the Board is seeking attorney services. Pursuant to 62 Pa. C.S. §518, cost is not an initial factor in determining the most qualified bidder. Specifically, Section 62 Pa. C.S. §518(e) provides:

Award. - - Award shall be made to the responsible offeror determined in writing by the contracting officer to be best qualified based on the evaluation factors set forth in the request for proposals. Fair and reasonable compensation shall be determined through negotiation. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror. If proposals were submitted by one or more other responsible offerors, negotiations may be conducted with the other responsible offeror or responsible offerors in the order of their respective qualification ranking. The contract may be awarded to the responsible offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.
62 Pa.C.S. §518(e).

Your required fees are to be included in the Cost Submittal attached as Appendix G or in a form substantial similar thereto. A hard copy must also be submitted to the Issuing Officer. Please refer to instructions set forth in Paragraph I, Section 1-11 in this RFP on how to submit the Cost Submittal. The Cost Submittal will not be separately scored but may be used in negotiations.

The Issuing Office reserves the right, in its sole and complete discretion, to reject any and all proposal(s) received as a result of this RFP. The issuance of this RFP does not obligate the Board to accept any of the resulting proposals. The Board may negotiate with multiple proposers after the proposal deadline and before award of contract or procurement. The Board reserves the right to modify or discontinue the procurement process at any time or to modify or extend the deadlines noted above, and makes no commitments, implied or otherwise, that this process will result in a business transaction with one or more proposers or other parties.

In addition to other contractual terms to be included in the contract or procurement entered into by the awarded Offeror, including but not limited to the SERS Data and Information Security Addendum, the following terms will be included in the contract or procurement. If you are unwilling to agree to the specific contractual provisions as drafted below, you must identify that in your Proposal and object to the provision, either in whole or in part. If you do not so object, the following terms will be deemed accepted and will become a part of the contract or procurements.

PART V
STANDARD FORM CONTRACT FOR LEGAL SERVICES

Document Number: _____

CONTRACT FOR LEGAL SERVICES

This Contract for Legal Services (“Contract”), entered into as of the **Effective Date** by and between [XXXXX], hereinafter called the “Law Firm” and the Commonwealth of Pennsylvania State Employees’ Retirement Board (“Board”) transacting business as the State Employees’ Retirement System (“SERS”).

WHEREAS, SERS has a need for professional and specialized legal services to represent SERS in matters described in Exhibit A;

WHEREAS, the Law Firm has represented that it is qualified to and has agreed to perform such professional and specialized legal services; and

WHEREAS, the Law Firm was chosen following a competitive procurement pursuant to Section 518 of the Commonwealth Procurement Code, with fair and reasonable compensation having been negotiated and the Law Firm has agreed to perform such professional and specialized legal services.

NOW, THEREFORE, the Board and the Law Firm, with the intention of being legally bound, hereby agree as follows:

1. **Definitions.** The following definitions shall apply when used in this Contract:
 - a. “Chief Counsel” shall mean the Chief Counsel of SERS, who serves as chief legal advisor to the Board and supervises, coordinates, and administers the legal services for SERS.
 - b. “Effective Date” shall mean: a) the date the Contract has been fully executed by the Law Firm and by SERS and all approvals required by Commonwealth contracting procedures have been obtained or b) the date referenced in the Contract, whichever is later or c) in cases where the Board has determined an emergent need for counsel as provided below, the date on the Notice to Proceed. The Contract shall not be a legally binding contract until after a copy of the fully executed Contract and a Notice to Proceed have been sent to the Law Firm except as otherwise provided for emergent services noted below.
 - c. “Guidelines” shall mean the Retention Guidelines set forth in Exhibit F. The Guidelines are incorporated into this Contract as if set forth fully herein. In case of a conflict between this Contract and the Guidelines, the Contract shall control.

- d. “Notice to Proceed” shall mean a written notice sent to the Law Firm stating that the contract has been fully executed and that the Law Firm may commence performance. The Board, through the Issuing Office, shall send a Notice to Proceed to the Law Firm either via U.S. Mail or email, and the Board shall send a fully executed copy of the contract with the notice to proceed.
2. Services. The Law Firm shall perform the services described in Exhibit A of this Contract.
 3. Compensation. The Law Firm shall be compensated by the Board for the services contracted in accordance with the provisions established in Exhibits B and C of this Contract.
 4. Term of Contract.
 - a. The term of the contract will commence on the Effective Date and will end five (5) years from the Effective Date.
 - b. Except as otherwise specifically provided for herein, SERS, shall not be liable to pay the Law Firm for any services or work performed or expenses incurred before the Effective Date of the Contract.
 - c. With the approval of Chief Counsel, the Board and the Law Firm may extend the term of this Contract at any time during the term of the Contract or any renewals or extensions thereof pursuant to Paragraph 9 of this Contract.
 - d. If the services to be provided by the Law Firm hereunder have been approved as an emergency procurement until full execution of this Contract, the Law Firm may provide these services based upon such emergency approval. The approval to begin working immediately due to such urgent need will be set forth in the appointment letter to the Law Firm. Upon full execution of this Contract, all services provided during the period between the date of emergency approval in the appointment letter and the Effective Date of the Contract shall be merged into and covered by the terms of this Contract.
 5. Billing and Invoices.
 - a. **Billing.** The Law Firm shall submit monthly invoices to SERS for services performed during each billing period. Invoices shall be forwarded to:

**Chief Counsel
State Employees’ Retirement System
30 North Third Street, Suite 150
Harrisburg, PA 17101-1716**

Each invoice must be accompanied by a cover letter on the Law Firm’s letterhead and include an itemized listing of the services performed by attorneys and other professionals, by date, by hours worked, and by rate.

b. **Invoices.** Invoices must also include the following information:

i. Law Firm Information, including:

- Firm name
- Firm's federal employer identification number
- Firm's relationship manager and e-mail address
- Firm's address
- Firm's telephone number
- Firm's file number or matter number (if applicable)

ii Administrative Information, including:

- Date of invoice
- Unique Invoice Number
- Name of Agency Chief Counsel (or designee)
- Name of Agency: SERS
- Agency's address:
 - 30 North Third Street, Suite 150
 - Harrisburg, PA 17101-1716
- RFP number: 23-024
- Contract number: to be determined
- Funds Commitment number (if applicable)
- Specific matter or project name for which services were performed (only one per invoice, even if the contract is being used for more than one matter)
- Service dates (i.e, start and end dates for services covered by invoice)
- Total fees for professional services rendered regarding invoice
- Total expenses incurred regarding invoice
- Prior balance due (if applicable)
- Total amount due

c. **Labor Costs.** The amount shown on each invoice for labor costs must be in accordance with the rates set forth in Appendix B of this contract.

d. **Non-Labor Costs.** Invoices must list non-labor costs such as those incurred for travel, food, and lodging, as described in Appendix C of this contract. SERS shall reimburse the Law Firm for travel, meal costs, and lodging costs for which supporting documentation is provided, in reasonable amounts incurred by the Law Firm in connection with the performance of services under the contract, as described in Appendix C.

e. **Law Firm Certification.** Invoices must contain a statement that reads substantially as follows:

The Law Firm hereby certifies that the services supplied and expenses incurred, as stated in the attached invoice, have met all of the required standards set forth in the contract for legal services.

- f. **Firm Signature.** Invoices or accompanying cover letters must be signed by an authorized representative of the Law Firm.
- g. **Progress Reports.** Separate and apart from the invoice, the Law Firm must include a progress report with itemized details regarding the engagement to SERS, including tasks performed and time spent.
- h. **Effect of Non-Conformance.** The Law Firm's failure to include all of the required invoicing information will result in the return of the invoice and a request for the submission of a new invoice that conforms with the requirements set forth in this paragraph.
6. Payment. SERS will use its best effort to make payments on acceptable invoices within 45 days of their receipt, in final form.
7. Consultation. The Law Firm shall consult with and keep Chief Counsel and the Board fully informed as to the progress of all matters covered by this Contract. The Law Firm shall consult and cooperate with, and shall be responsible directly to, Chief Counsel, the Board, and other officials as designated by Chief Counsel on all matters of strategy and tactics. The duty of the Law Firm shall be to advise, counsel, and recommend actions to the Board or the other officials or agencies designated by the Board, and to carry out to the best of its ability their directions. The Law Firm will not make any offer, settlement, or compromise without the written consent of the Chief Counsel. The Law Firm shall offer Chief Counsel the opportunity to review court documents and briefs prior to filing. The Law Firm shall promptly furnish Chief Counsel with copies of all correspondence and all court documents and briefs prepared in connection with the services rendered under this Contract and such additional documents as may be requested. Upon notification of its availability by Chief Counsel, the Law Firm shall make all of its work product prepared in connection with the services rendered under this Contract, and other parties' pleadings, discovery, correspondence, and other relevant documents and materials, available to Chief Counsel in format acceptable to Chief Counsel.
8. Subcontracting, Key Personnel, and Experts. Subcontracting, assignment, or transfer of all or part of the interest of the Law Firm in this Contract or in the work covered by this Contract is prohibited without the prior written approval of Chief Counsel. In the event such consent is given, the terms and conditions of this Contract shall apply to and bind the party or parties to whom such work is subcontracted, assigned, or transferred as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors and experts so engaged. The Law Firm, with respect to any replacement of key personnel assigned to this matter, shall consult with the Board. The Board's consent to the proposed assignment is required and may not be withheld unreasonably. Notwithstanding the foregoing, the Law Firm may, with the prior written approval of Chief Counsel, engage experts in various fields related to the subject matter of this Contract to assist the Law Firm in the performance of its services under this Contract. The hourly rates, fees, or other compensation to be paid to such experts shall also be subject to the approval of Chief Counsel. Approved compensation of such experts, as incurred, shall be included in the Law

Firm's invoices presented pursuant to the provisions of Paragraph 5 of this Contract, without addition, surcharge, or increase by the Law Firm of the actual fees billed to the Law Firm by such experts. The terms and conditions of this Contract including, but not limited to, the provisions of Exhibits C and D, shall apply to and bind the subcontractors or experts engaged as fully and completely as the Law Firm is hereby bound and obligated and the Law Firm shall obtain written acknowledgement thereof from all subcontractors or experts so engaged.

9. Ownership Rights. All documents, data, and records produced by the Law Firm and any experts in carrying out the obligations and services hereunder, without limitation and whether preliminary or final, are and shall become and remain the property of SERS.

- a. SERS shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the Law Firm and any experts and the Law Firm and any experts shall have no right or interest therein.
- b. Upon completion of the services hereunder or at the termination of this Contract, all such documents, data, and records shall, if requested by Chief Counsel or the Board, be appropriately arranged, indexed, and delivered to Chief Counsel or the Board by the Law Firm.
- c. Any documents, data, and records given to or prepared by the Law Firm and any subcontractors or experts under this Contract shall not be made available to any individual or organization by the Law Firm or any subcontractors or experts without the prior approval of Chief Counsel. Any information secured by the Law Firm and any subcontractors or experts from SERS in connection with carrying out the services under this Contract shall be kept confidential unless disclosure of such information is approved in writing by Chief Counsel or is directed by a court or other tribunal of competent jurisdiction.

Notwithstanding the provisions of Paragraph 9 of this Contract, the Law Firm may retain copies of documents delivered to Chief Counsel or to the Board.

10. Modification or Changes. With the approval of Chief Counsel, the Board and the Law Firm may make modifications to this Contract at any time during the term of the Contract or any renewals or extensions thereof. Changes regarding funding of a Contract that refers to the total estimated amount of the Contract as set forth in paragraph 3 may be accomplished via a funding adjustment pursuant to SERS' procedures. Changes regarding funding of a Contract that states an amount not to exceed as set forth in paragraph 3, or a change in Contract length, may be accomplished by a letter of mutual consent signed by the Board and the Law Firm. All other changes to contract terms, including changes in the scope of work, must be incorporated into a formal written amendment to this Contract, signed by both parties, and executed in the same manner as this original Contract and in accordance with applicable law.

11. Conflict of Interest. The Law Firm represents and warrants that it has no conflicting

representation that has not been fully disclosed to and waived by Chief Counsel and shall not undertake any representation that conflicts with the performance of the services or obligations under this Contract unless such conflicting representation has been fully disclosed to and waived by Chief Counsel. Any conflicting representation shall be promptly disclosed to Chief Counsel. Chief Counsel shall determine whether such conflict is cause for termination of this Contract. The process for obtaining conflict waivers is more fully described in the Conflict Waiver Procedure, which is attached as Exhibit D of this Contract.

12. Confidentiality. The Law Firm acknowledges that SERS is an agency of the Commonwealth of Pennsylvania and is subject to Pennsylvania Right-to-Know Law, 64 P.S. §67.101-67.3104 (“RTKL”). As such, SERS may be required to provide public access to certain information.

13. Inability to Perform. The Law Firm agrees that if, because of death or any other occurrence beyond the control of the Law Firm, it becomes impossible for any principal or principals and, in particular, the principals assigned to this project, to render the services set forth in this Contract, neither the Law Firm nor the surviving principals shall be relieved of their obligations to complete performance hereunder. The Law Firm shall, with respect to any replacement principal proposed to be assigned to this matter, consult with Chief Counsel. Chief Counsel’s consent to the proposed replacement is required and may not be withheld unreasonably.

14. License to Appear. The Law Firm represents and warrants that attorneys involved in this representation are duly licensed and in good standing to practice before the judicial forum, court, board, or tribunal before which they will appear or practice on behalf of SERS. The Law Firm, subject to approval by Chief Counsel, may obtain a subcontractor to act as co-counsel where appearance by the Board is required in a forum or jurisdiction where its attorneys are not licensed to practice, provided, however, that the firm’s use of the subcontractor in that circumstance is subject to Paragraph 7 of this Contract.

15. Independent Contractor. In performing the services required by this Contract, the Law Firm will act as an independent contractor and not as an employee or agent of SERS.

16. Termination Provisions. SERS has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Law Firm.

a. Termination for Convenience. SERS shall have the right to terminate this Contract for its convenience if SERS determines termination to be in its best interest. The Law Firm shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Law Firm be entitled to recover loss of profits.

b. Non-Appropriation. SERS’ obligation to make payments during any SERS 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, SERS shall have the right to terminate this Contract. The Law Firm 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 this 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. SERS shall have the right to terminate this Contract for Law Firm default upon written notice to the Law Firm. SERS shall also have the right, upon written notice to the Law Firm, to terminate the Contract for other cause as specified in this Contract or by law. If it is later determined that the SERS erred in terminating the Contract for cause, then, at the SERS' discretion, the Contract shall be deemed to have been terminated for convenience under Subparagraph 15(a).

17. Integration Clause. This Contract, including all referenced documents, constitutes the entire agreement between the parties. Terms used in exhibits hereto shall have the same meanings as are ascribed thereto in this Contract unless otherwise defined therein. No agent, representative, employee, or officer of either SERS or the Law Firm 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, 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 pursuant to Paragraph 10 of this Contract.

18. Nondiscrimination/Sexual Harassment. The Law Firm shall comply with all applicable provisions of state and federal constitutions, laws, regulations, and judicial orders pertaining to nondiscrimination, sexual harassment, and equal employment opportunity, including the provisions of the Nondiscrimination/Sexual Harassment Clause, which is attached hereto in Exhibit E and incorporated by reference.

19. Integrity Provisions. The Law Firm agrees to comply with the Integrity Provisions, which are attached hereto as Exhibit E and incorporated by reference.

20. Responsibility Provisions. The Law Firm agrees to comply with the Responsibility Provisions, which are attached hereto in Exhibit E and incorporated by reference.

21. The Americans With Disabilities Act. The Law Firm agrees to comply with The Americans With Disabilities Act Provisions, which are attached hereto in Exhibit E and incorporated by reference.

22. Enhanced Minimum Wage Provisions. The Law Firm agrees to comply with The Enhanced Minimum Wage Provisions, which are attached hereto in Exhibit E and incorporated by reference.

23. Audit Provisions. SERS shall have the right, at reasonable times and at a site designated by SERS, to audit the books, documents, and records of the Law Firm to the extent that the books, documents, and records relate to fees, costs, or pricing data for this Contract. The Law Firm agrees to maintain records that will support the fees charged and costs incurred for this Contract.

The Law Firm shall preserve books, documents, and records that relate to fees, costs, or pricing data for this Contract for a period of three years from the date of final payment hereunder. The Law Firm shall give full and free access to all records to SERS and/or its authorized representatives.

24. System and Organization Controls (“SOC”) Audit Provisions. SERS may request the Law Firm to furnish a SOC 1 Report with corresponding Bridge Letter at any time during, and within 2 years after the termination of the Contract. For the purposes of the Contract, a SOC 1 Report shall mean a SOC Type 1 report focused on outsourced services that could impact SERS’ financial reporting. A “Bridge Letter” shall mean an assertion that the Law Firm’s controls were in place and operating between completion of SERS’ SOC reports. The Law Firm agrees to provide these documents to SERS in a timely manner after the request clear of any additional terms and conditions.

25. Offset Provision. The Law Firm agrees that SERS may set off the amount of any state tax liability or other obligation of the Law Firm or its subsidiaries to the Commonwealth against any payments due the Law Firm under its contract with SERS.

26. Indemnity. The Law Firm shall indemnify and defend SERS from and against any and all claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorneys and other fees, asserted by third parties (“Claims”), if such Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the Law Firm or any of its officers, agents, employees and/or representatives in relation to professional services provided to SERS by the Law Firm under this Contract. This indemnity provision shall not apply to Claims if payment is available under the Law Firm’s professional liability insurance policies.

27. Insurance. The Law Firm represents and warrants that it carries malpractice insurance in the amount usual and customary for firms of its size and practice areas, subject to normal deductibles, and covenants that it will maintain such coverage throughout its representation of SERS.

28. Notice. Any written notice to the Board under this Contract is sufficient if delivered to the Board personally, by electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section. All notices shall be sent to the Board at the below address:

Chief Counsel
State Employees' Retirement Board
30 North Third Street, Suite 150
Harrisburg, PA 17101-1716

Any written notice to the Law Firm under this Contract is sufficient if delivered to the Law Firm personally, electronic or digital transmission (provided such delivery is confirmed), or by a recognized overnight courier service (e.g., UPS, FedEx, etc.), with confirmed receipt, or by certified or registered United States mail, postage prepaid, return receipt requested, sent to the address set forth below or to such other address as such party may designate by notice given pursuant to this section:

CONTACT NAME, Esquire
LAW FIRM NAME
ADDRESS
CITY, STATE ZIP CODE

28. Contract Controversies. In the event of a controversy or claim arising from this Contract, the Law Firm must, within six months after the cause of action accrues, file a written notice of the controversy or claim with Chief Counsel for a determination. Chief Counsel shall send a written determination to the Law Firm. The decision of Chief Counsel shall be final and conclusive unless, within 15 days after receipt of such written determination, the Law Firm files a claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Law Firm shall proceed diligently with the performance of this Contract in a manner consistent with the interpretation of Chief Counsel, and SERS shall compensate the Law Firm pursuant to the terms of this Contract.

29. 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 Law Firm 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 Law Firm 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.

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FISCAL APPROVAL BY COMPTROLLER OPERATION

This document is approved for fiscal responsibility and budgetary appropriateness, the availability of funds.

Comptroller

Date

EXHIBIT A
DESCRIPTION OF SERVICES

The Board intends to select qualified tax counsel to provide legal services as follows:

1. Advise the Board on compliance with all tax qualification requirements pursuant to the Internal Revenue Code (“IRC”).
2. Provide sophisticated legal advice on federal and state tax and benefit issues, including but not limited to providing advice relating to the Board’s investments. With regards to the Board’s non-US investments, provide advice on international tax matters.
3. Provide specific, written recommendations and strategies to achieve and maintain the qualified status of the Plans, including but not limited to, written recommendations on amendments to the Issuing Office’s respective plan documents including statutes, policies, and procedures, to ensure the Plans are in full compliance with the IRC qualification criteria. This may include the preparation of and filing for a tax qualification determination letter for the DC Plan, as well as maintenance of the qualified statuses of the remaining Plans listed in Section 1.2.
4. Advise the Board concerning technical compliance of plan documents, including state laws, rules, administrative policies, and procedures for the Plans administered by the Board to achieve and maintain the qualified status of the Plans.
5. Advise the Board concerning the operational compliance of the Plans to maintain the qualified status of the Plans administered by the Board.
6. Advise the Board on ongoing tax compliance matters related to SERS and the Plans.
7. Prepare and file documents with the Internal Revenue Service (“IRS”), or other regulatory bodies, on behalf of the Plans.
8. Represent the Board before the IRS or other regulatory bodies as needed.
9. Present legal opinions concerning the reporting and taxation of qualified benefits and investment transactions including obtaining necessary opinions, private letter rulings, and other documents from the IRS, or other state or federal regulatory or governing bodies as requested by the Board.
10. Advise and provide legal analysis to the Board on proposed Commonwealth legislation that may have tax implications to the Board, the Plans, or members and participants of the Plans.
11. Advise and provide legal analysis to the Board on participating in the IRS’ Employee Plans Compliance Resolutions System (EPCRS), including self-correction.¹²

12. When requested, assist staff in the preparation of testimony related to tax issues before elected or appointed officials in the legislative and executive branch of government and be available to meet with such officials and testify as needed.
13. Attend Board and Board committee meetings at the request of the Board or the Executive Director of SERS.
14. Work closely with SERS' executive staff and the Chief Counsel's Office on tax-related issues.

EXHIBIT B
BILLING RATE INFORMATION

The Firm shall be paid at the following rates:

1. Senior Partners will be billed at a rate of \$ ____ per hour;
2. Partners will be billed at a rate of \$ ____ per hour;
3. Senior Associates will be billed at a rate of \$ ____ per hour;
4. Associates will be billed at a rate of \$ ____ per hour; and
5. Paralegals will be billed at a rate of \$ ____ per hour.

The Law Firm shall not bill for travel time to fulfill the Law Firm's obligations involved in the performance of services under this Contract.

EXHIBIT C COMPENSATION

The Board shall pay the Law Firm for the services under this Contract and reimbursement of the Law Firm's eligible costs. The Contract provides for compensation of the Law Firm's fees and costs up to the amount of \$249,000.00, unless agreed upon by the parties in writing. Payments of additional amounts may be made, and continued performance by the Law Firm will be required pursuant to Paragraph 9 of this Contract.

1. The Law Firm shall be reimbursed for all reasonable, actual, direct labor costs incurred in fulfilling the terms of this Contract in accordance with the rates established in Paragraphs 3 and 5 and Exhibits B and C of this Contract.

2. The Law Firm shall be reimbursed for all reasonable, actual, ordinary, and necessary direct non-labor costs incurred in fulfilling the terms of this Contract, subject to specific limitations such as those set forth in Paragraph 5 of this Contract including, but not limited to, the following:

a. Reasonable, actual, ordinary, and necessary expenses for travel, meals, and lodging incurred by the Law Firm to fulfill the Law Firm's obligations under this Contract. The Law Firm shall retain all receipts therefor and shall provide copies to the Department if requested. Mileage reimbursement shall be made in accordance with the travel regulations applicable to the Commonwealth for the use of personally owned motor vehicles. Expenses for lodging and meals shall be reimbursed at rates limited to the single-occupancy rate at the nearest Hilton or other similarly priced hotel or motel chain and the amount of reimbursement for meals shall be limited to the price of a moderately-priced meal at that hotel or motel. No reimbursement shall be allowed for any alcoholic beverages.

b. Reasonable, actual, ordinary, and necessary expenses for:

- (1) Communications, including telephone, facsimile transmissions, telegraph, postage, parcel post, and freight and package express;
- (2) Photocopies made by the Law Firm "in house," to be reimbursed at the maximum rate of \$.15 per page;
- (3) Other reproduction costs (including, but not limited to, photographs, photocopies, prints, and offset work); and
- (4) Document control and analysis contracted for with outside firms.

The Law Firm shall retain all receipts therefor and shall, upon request of SERS, provide any necessary documentation.

c. Reasonable, actual, ordinary, and necessary expenses for other specific materials required for and used solely in the fulfillment of this Contract. The Law Firm shall retain all receipts therefore and shall, upon request of the Department, provide any necessary documentation.

3. Travel, meals, lodging, and other direct non-labor costs which the Law Firm expects to incur under this Contract outside of the Commonwealth of Pennsylvania, with the exception of telephone, mailing, and other similar communication expenses, shall require the prior approval of Chief Counsel, which approval shall not be unreasonably withheld. Prior approval by Chief Counsel of travel to be undertaken by the Law Firm outside of the Commonwealth of Pennsylvania as an incident of the Law Firm's performance of services under this Contract shall constitute approval for the Law Firm to incur reasonable, actual, ordinary, and necessary expenses for travel, meals, lodging, and other ordinary and necessary direct non-labor costs. The Law Firm shall retain all receipts and shall, upon request of the Department, provide any necessary documentation.

4. The Law Firm shall require approval by Chief Counsel before incurring any extraordinary or unusual expenses.

5. The Law Firm shall advise Chief Counsel when direct labor and other costs reach 75% of the amount initially encumbered for performance of this Contract and also 75% of any amount encumbered by any amendment.

EXHIBIT D
CONFLICT WAIVER PROCEDURE

1. The lawyer or law firm (“Law Firm”) must promptly disclose any conflicting representation, unless it has been otherwise waived. Failure to disclose a conflict or undertaking a conflicting representation without obtaining a waiver is cause for termination of the contract.
2. The Law Firm’s request for a waiver shall be submitted in writing to the Chief Counsel of SERS. Requests shall be in letter form but may be sent electronically in PDF format.
3. The waiver request shall:
 - a. Identify all existing representations of Commonwealth agencies;
 - b. Describe the nature of the conflict;
 - c. Set forth the measures the law firm will take to protect the SERS, its Board, or employees from any prejudice or detriment if the conflict is waived, and
 - d. State that the other party the law firm represents or seeks to represent has granted a waiver (or a waiver has been sought, and if sought, a second written notice of the granting of such waiver shall be provided).
4. Chief Counsel shall analyze the request and submit his or her recommendation to approve or disapprove the request with supporting legal analysis, including any applicable references to the Rules of Professional Conduct.
5. Chief Counsel will make all waiver decisions and issue a letter to the law firm approving or disapproving the waiver request.
6. The decision in a matter shall not be binding on Chief Counsel with respect to future matters unless Chief Counsel so states.

EXHIBIT E
COMMONWEALTH STANDARD TERMS AND CONDITIONS

1. DEFINITIONS.

Capitalized terms used in these Commonwealth standard terms and conditions that are not otherwise defined in these provisions have the meanings specified in the contract to which it is attached.

2. ENHANCED MINIMUM WAGE.

a. **Enhanced Minimum Wage.** Contractor shall 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 services or lease when the employee spends at least 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 will 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 Commonwealth will publish applicable adjusted amount in the Pennsylvania Bulletin by March 1 of each year to be effective the following July 1.

c. **Exceptions.** These Enhanced Minimum Wage Provisions do not apply to employees:

- i. Exempt from minimum wage under the Minimum Wage Act of 1968;
- ii. covered by a collective bargaining agreement;
- iii. 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
- iv. required to be paid a higher wage under any state or local policy or ordinance.

d. **Notice.** The Contractor shall: (1) post this Enhanced Minimum Wage Provision 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; or (2) for the entire period of the contract, provide electronic notice of this clause to its employees not less than annually.

e. **Records.** Contractor must maintain and, upon request and within the time periods requested by the Commonwealth, provide to the Commonwealth all employment and wage records necessary to document compliance with these Enhanced Minimum Wage Provisions.

f. **Sanctions.** Contractor's failure to comply with these Enhanced Minimum Wage Provisions may result in the imposition of sanctions, which may include, but are not 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.** The Contractor shall include these Enhanced Minimum Wage Provisions in its subcontracts under this contract or lease to ensure that these provisions are binding on its subcontractors.

3. INDEMNIFICATION.

a. **Contractor Obligations.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with any activities performed by the Contractor or its employees and agents that are related to this contract, as determined by the Commonwealth in its sole discretion.

b. **Commonwealth Attorneys Act.** The Commonwealth shall provide the Contractor with prompt notice of any claim or suit 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 any 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.

c. **Settlement.** Notwithstanding the above, neither party may enter into a settlement of any claim or suit without the other party's written consent, which will not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense and any related settlement negotiations.

4. NONDISCRIMINATION/SEXUAL HARASSMENT.

a. **Representations.** The Contractor represents that it is presently in compliance with and will remain in compliance with all applicable federal, state, and local laws, regulations, and policies relating to nondiscrimination and sexual harassment for the term of the contract. The Contractor 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 its books, records, and accounts by the Commonwealth for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

b. Nondiscrimination/Sexual Harassment Obligations. The Contractor shall not:

- i. in any manner discriminate in the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under this contract or any subcontract, 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.
- ii. 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 this contract.
- iii. 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 this contract.
- iv. in any manner 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 this contract relates.
- v. 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.

c. Establishment of Contractor Policy. The Contractor shall establish and maintain a written nondiscrimination and sexual harassment policy that complies with the applicable law and these Nondiscrimination/Sexual

Harassment provisions and shall inform its employees in writing of the policy. The policy must contain a provision that states that sexual harassment will not be tolerated and employees who practice it will be disciplined. For the entire period of the contract, the Contractor shall: (1) post its written nondiscrimination and sexual harassment policy or these Nondiscrimination/Sexual Harassment provisions conspicuously in easily accessible and well-lighted places customarily frequented by employees at or near where the contracted services are performed; or (2) provide electronic notice of the policy or this clause to its employees not less than annually.

d. **Notification of Violations.** The Contractor's obligations pursuant to these provisions are ongoing from the effective date and through the termination date of the contract. Accordingly, the Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

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

f. **Subcontracts.** The Contractor shall include these Nondiscrimination/Sexual Harassment provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of these provisions in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by those provisions. If the Contractor becomes aware of a subcontractor's violation of this clause, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

5. CONTRACTOR INTEGRITY.

a. **Definitions.** For purposes of these Contractor Integrity Provisions, the following definitions apply:

i. "Affiliate" means two or more entities where (a) a parent entity owns more than 50% of the voting stock of each of the entities; (b) a common shareholder or group of shareholders owns more than 50% of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.

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

- iii. “Contractor Related Parties” means any Affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of five percent or more interest in the Contractor.
- iv. “Financial Interest” means ownership of more than a five percent interest in any business or holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
- v. “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](#), as may be amended, 4 Pa. Code §7.153(b), apply.
- vi. “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.

b. Representations and Warranties.

i. Contractor Representation and Warranties. The Contractor represents, to the best of its knowledge and belief, and warrants that within the last five years neither the Contractor nor Contractor Related Parties have:

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 are not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

ii. Contractor Explanation. If the Contractor cannot make the representations and warranties set forth above at the time of its submission of its bid or proposal or if this contract is awarded on a

non-bid basis at the time of the execution of the contract, the Contractor shall submit a written explanation outlining the reasons why it cannot make those representations and warranties. The Commonwealth may, based on its evaluation of the explanation provided, determine whether it is in the Commonwealth's best interest to execute the contract.

iii. **Further Representations.** By submitting any bills, invoices, or requests for payment pursuant to this contract, the Contractor further represents that it has not violated any of these Contractor Integrity Provisions during the term of the contract.

iv. **Notice.** The Contractor shall immediately notify the Commonwealth, in writing, if at any time during the term of the contract it becomes aware of any event that would cause the Contractor's certification or explanation to change. The Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made in these provisions are currently false or misleading due to intervening factual circumstances or were false or misleading or should have been known to be false or misleading when entering into the contract.

c. **Contractor Responsibilities.** During the term of this contract, the Contractor shall:

- i. maintain the highest standards of honesty and integrity.
- ii. take no action in violation of any applicable laws, regulations, or other requirements applicable to the Contractor that govern Commonwealth contracting and procurement.
- iii. establish and implement a written business integrity policy that includes, at a minimum, the requirements of these provisions as they relate to the Contractor's activity with the Commonwealth and Commonwealth employees and ensure that its employees comply with the policy.
- iv. not accept, agree to give, offer, confer, 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, statement of policy, management directive, or bulletin applicable to the provision of goods or services under this contract.
- v. 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. The Contractor must 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 the date the Contractor signs the contract. The Commonwealth shall be deemed to have consented if the required disclosure is received and all of the required Commonwealth signatures are affixed.

vi. comply with the requirements of the Lobbying Disclosure Act (65 Pa. C.S. §13A01 et seq.) regardless of the method of award.

vii. comply with the requirements of Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a) if this contract was awarded on a Non-bid Basis.

viii. immediately notify the Commonwealth contracting officer or the Office of the State Inspector General, in writing, when the 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 the ethical standards.

d. **Investigations.** If a State Inspector General investigation is initiated, the Contractor shall:

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

ii. 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 and make identified Contractor employees available for interviews at reasonable times and places.

iii. upon the inquiry or request of an Inspector General, 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. This information may include, but is not limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract.

e. **Termination.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Contractor Integrity provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one does 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 contract.

f. **Subcontracts.** The Contractor shall include these Contractor Integrity Provisions in its contracts with all subcontractors providing goods or services under this contract. The incorporation of this provision in the Contractor's subcontracts does not create privity of contract between the Commonwealth and any subcontractor, and no third-party beneficiaries are created by the inclusion of these provisions. If the Contractor becomes aware of a subcontractor's violation of these provisions, the Contractor shall use its best efforts to ensure the subcontractor's compliance with these provisions.

6. CONTRACTOR RESPONSIBILITY.

a. **Definition.** For the purpose of these provisions, the term "Contractor" means 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. The term also includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

b. Contractor Representations.

i. The Contractor represents for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this 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 make this representation, the Contractor shall submit, along with its contract, a written explanation of why such certification cannot be made.

ii. The Contractor represents that as of the date of its execution of this 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. **Notification.** The Contractor shall notify the Commonwealth if, at any time during the term of this contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best of its knowledge, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. The Contractor shall provide this notification within 15 days of the date of suspension or debarment.

d. **Default.** The Contractor's failure to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government constitutes an event of default of the contract with the Commonwealth.

e. **Reimbursement.** The Contractor shall 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 contract or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. These costs include, but are not 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. **Suspension and Debarment List.** The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by visiting the eMarketplace website at <http://www.emarketplace.state.pa.us> and clicking the Debarment list tab.

7. AMERICANS WITH DISABILITIES ACT.

a. **No Exclusion.** Pursuant to the Americans with Disabilities Act, 42 U.S. Code §12101, et seq., no qualified individual with a disability may, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract.

b. **Compliance.** For all goods and services provided pursuant to this contract, the Contractor shall comply with Title II of the Americans with Disabilities Act, the "General Prohibitions Against Discrimination" set forth in 28 C. F. R.

§35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that apply to state and local governments.

c. **Indemnification.** The Contractor shall indemnify the Commonwealth against all third-party claims, suits, demands, losses, damages, costs, and expenses, including without limitation, litigation expenses, attorneys' fees, and liabilities, arising out of or in connection with the Contractor's failure or its employee's or agent's failure to comply with the provisions of paragraph a, as determined by the Commonwealth in its sole discretion.

8. **APPLICABLE LAW AND FORUM.**

This contract is governed by and must be interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of law's 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, and waives any claim or defense that such forum is not convenient or proper. Any Pennsylvania court or tribunal has in personam jurisdiction over the Contractor, and the Contractor consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of the Commonwealth's rights or defenses.

9. **RIGHT TO KNOW LAW.** Omitted.

10. **OFFSET.**

The Commonwealth may set off the amount of any state tax liability or other obligation of the Contractor, or its subsidiaries, owed to the Commonwealth against any payments due the Contractor under any contract between the Commonwealth and Contractor.

11. **AUTOMATED CLEARING HOUSE (ACH) PAYMENTS.**

a. **Payment Method.** The Commonwealth shall make contract payments through the Automated Clearing House (ACH). Within 10 days of award of the contract or purchase order, the Contractor must submit or must have submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM).

b. **Unique Identifier.** The Contractor must submit a unique invoice number with each invoice submitted. The Commonwealth shall list the Contractor's unique invoice number on its ACH remittance advice to enable the Contractor to properly apply the state agency's payment to the invoice submitted.

c. **ACH Information in SRM.** The Contractor shall ensure that the ACH information contained in SRM is accurate and complete. The Contractor's failure to maintain accurate and complete information may result in delays in payments.

12. WORKER PROTECTION AND INVESTMENT.

The Contractor shall comply with all applicable Pennsylvania state labor laws and worker safety laws including, but not limited to, the following:

- a. Construction Workplace Misclassification Act;
- b. Employment of Minors Child Labor Act;
- c. Minimum Wage Act;
- d. Prevailing Wage Act;
- e. Equal Pay Law;
- f. Employer to Pay Employment Medical Examination Fee Act;
- g. Seasonal Farm Labor Act;
- h. Wage Payment and Collection Law;
- i. Industrial Homework Law;
- j. Construction Industry Employee Verification Act;
- k. Act 102: Prohibition on Excessive Overtime in Healthcare;
- l. Apprenticeship and Training Act; and
- m. Inspection of Employment Records Law.

EXHIBIT F
RETENTION GUIDELINES FOR OUTSIDE COUNSEL

The Commonwealth of Pennsylvania State Employees' Retirement System ("SERS") expects to have a productive, professional, and cost-effective relationship with outside counsel. These Guidelines apply to all engagements for services between the Board and your law firm, regardless of the law firm office from which those legal services are performed. Any exception must be approved in advance by the Board.

I. MATTER MANAGEMENT AND REPORTING

A. The Contract for Legal Services

Your law firm has been retained by the Board to perform legal services as set forth in the Contract for Legal Services ("Contract"). The Contract shall define the scope of services covered by the matter which is the subject of the Contract; a "matter" may consist of a single representation or the provision of legal services in connection with a relatively routine, high volume practice area (e.g., workers' compensation). The Contract identifies the principal SERS in-house attorney responsible for managing the work. For complex litigation matters, a senior-level SERS litigation manager also may be assigned or otherwise involved in the case. For high volume matters, a third-party administrator also may have a defined role in managing the work. Outside counsel is expected to keep the responsible SERS attorney(s) informed of all significant developments that arise, as well as seek his or her direction on strategy and tactics.

Throughout the course of your law firm's representation, the law firm must be mindful of conflict issues and disclose promptly any conflicting representation. The Conflict Waiver Procedure that is a part of the Contract sets forth the process for disclosure. Failure to disclose a conflict or undertaking a conflicting representation without obtaining a waiver from SERS Chief Counsel is cause for termination of the contract.

B. Effective Utilization of Personnel

The Board generally expects a single outside lawyer to be primarily responsible for each matter. Outside counsel should discuss with the Board the staffing requirements for each matter, including the number of attorneys and staff that may work on the matter. The Board encourage the use of law clerks and paralegals for those aspects of any matter that do not need to be performed by an attorney. Staffing should reflect management practices that are consistent with the delivery of the appropriate level and type of legal services required in order to achieve effective results and resource efficiency.

The Board generally expects one lawyer to attend all relevant depositions, meetings, hearings, trial, and other proceedings. In more complex matters, additional lawyers may be necessary to represent the Board.

In concert with the Commonwealth's commitment to workforce diversity, the Board expects each law firm it engages to use its best efforts to: (1) consider persons from diverse backgrounds for assignment to the Project; and (2) actively promote full and equal participation of women, racial and ethnic minority groups, and all other persons of diverse backgrounds in the legal profession, as evidenced by the law firm's employment practices.

C. Matter Management, Budget and Reports

The Board expects regular communications with its counsel. The most effective representation results from a true partnership between SERS Chief Counsel and outside counsel. The law firm must send to the Board an initial report within forty-five (45) days of the retention of your services covering the following areas:

Management Plan and Budget – the Management Plan and Budget (“Plan”) should include an initial assessment of the assigned matter (see below) and a detailed strategy for handling the matter, including the feasibility of employing alternative dispute resolution techniques in litigation matters. The Plan must include an initial budget that estimates the legal fees and other costs to be incurred for the current calendar year as well as projected legal fees and costs for the entire duration of any matter that continues beyond the end of a calendar year. The firm must identify all personnel assigned to the matter, and their respective billing rates. An updated budget and personnel list, on firm stationery, must be submitted at the start of each subsequent calendar year or more frequently if there is a known material variance in the budget. The Board recognizes that it may be difficult at an early stage to project all the resources required for a matter; however, SEB believes that the plan and budget are important management tools.

Initial Assessment of Litigation Claims¹ – The Initial Assessment must include a detailed description of the claim, applicable defenses, an assessment of potential liability and possible verdict range, any settlement demand by opposing counsel, and estimated trial date/time (if applicable).

The law firm is expected to keep Chief Counsel advised of the status of the matter. In the absence of material developments that require immediate notification, the law firm should submit at least quarterly a confidential matter status report that (1) summarizes developments to date; (2) identifies actions that are planned to be taken in the forthcoming six (6) months; and (3) updates the previously submitted Management Plan and Budget. In those instances where the responsible SERS attorney is not present at a meeting, hearing, deposition or any other relevant event, the law firm must send a prompt report of the event by telephone or electronic mail as directed by the responsible SERS Chief Counsel.

¹ If the matter involves litigation of a routine, high volume nature (e.g., workers' compensation), the SERS Chief Counsel shall define for the firm the level of reporting required for each individual claim.

D. Correspondence and Pleadings²

No significant correspondence or pleading should be sent or filed without prior approval of SERS Chief Counsel. In general, outside counsel should keep SERS Chief Counsel fully informed of all developments on a timely basis and consult with him or her on all matters of strategy, planning and proposed disposition by motion, trial, or settlement.

Correspondence: Copies of all correspondence received or sent on the Board's behalf by the law firm to opponents or other third parties should be sent to SERS Chief Counsel.

Pleadings: Copies of all pleadings received or filed on the Board's behalf by the law firm should be sent to SERS Chief Counsel.

SERS Chief Counsel should have the opportunity to discuss the preparation of pleadings with the law firm sufficiently in advance of filing deadlines to determine who will perform the work. SERS Chief Counsel, or her/his designee, may elect to prepare draft answers, motions, request for discovery and other pleadings. In such instances, such items will be forwarded to the law firm either in final form for filing or in draft form, and the law firm is expected to place them in final form in accordance with local rules.

E. Discovery

All discovery, electronic or otherwise, should be coordinated with the SERS Chief Counsel.³ SERS' personnel are not to be contacted directly without prior approval of SERS Chief Counsel.

SERS may prefer to have someone from its offices present during the preparation for and deposition of SERS' personnel. SERS believes its knowledge of the Commonwealth's business can be beneficial to the law firm in preparing the witness and in the course of questioning by opposing parties. The law firm is not permitted to waive the right of SERS' personnel to review and sign their depositions and must not enter into any stipulations to the contrary.

All discovery requests should be forwarded to SERS Chief Counsel immediately, indicating the response date. SERS Chief Counsel can better assist in preparing responses if outside counsel can, preliminarily, identify objectionable questions and indicate these questions for which information is requested, as well as a recommended approach for completing the response. Outside counsel must consult with SERS Chief Counsel regarding anticipated electronic discovery (e-discovery) requests and use of any e-discovery computer programs, whether owned by the firm or provided by third-party vendors. The Board will not pay for any such programs without advance approval.

² If the matter involves litigation of a routine, high volume nature, SERS Chief Counsel shall define for the firm the level of reporting required for each individual claim.

³ If the matter involves litigation of a high-volume nature, SERS Chief Counsel shall define for the firm his or her role in coordinating discovery, which may be minimal.

Many internal SERS documents are confidential or protected by privilege. Accordingly, SERS Chief Counsel may require that a Confidentiality Agreement and/or Protective Order be secured to ensure that the confidential nature of the information is maintained.

F. Expert Witnesses or Consultants

Where outside counsel determines that an expert witness or a special consultant is necessary for any matter, SERS Chief Counsel must be consulted prior to any engagement, and prior written approval must be obtained. In making such recommendation, outside counsel should provide SERS Chief Counsel with a written description of the study or testimony the expert is expected to provide, the expert's qualifications, the rationale for using an expert in the matter and an estimate of the expert's fees and expenses. As with the law firm's staffing and time on any matter, the Board expects that recommendations concerning the use of expert witnesses and consultants will be at appropriate levels for the risk and exposure involved in the matter.

G. Negotiations, Settlements and Appeals

The decision to try, settle or appeal a case rest solely with the Board. All settlement opportunities and demands must be brought promptly to the attention of SERS Chief Counsel, along with the law firm's recommendations. Under no circumstances may the law firm agree to settle any case on the Board's behalf, enter into a consent decree or stipulation, release any substantial right, or otherwise commit the Board on any issue without the Board's prior approval.

II. BILLING REQUIREMENTS

A. In General

Billing invoice requirements have been developed to clearly advise the law firm as to how the Board would like the bills submitted. Specific provisions are set forth in the Contract, and the format that should be used in invoice preparation is set forth in Paragraph 5 of the Contract. These requirements must be followed with respect to all bills unless SERS Chief Counsel has pre-authorized another arrangement.

The Board expects that any firm retained to perform services on behalf of the Board will accomplish its goals and objectives in a manner that maximizes value and minimizes expense without sacrificing quality. Compensation arrangements are set forth in the Contract.

If the Board inadvertently pays an invoice, which on review does not comply with the Guidelines, the Board retains the right to obtain reimbursement of the payment.

B. Rates

Unless a different billing arrangement is provided in the Contract, the Board will pay specified hourly rates, as set forth in the Contract by attorneys and paralegals. In matters where fees are based upon hourly rates, actual time in units of 1/10 of an hour is the maximum acceptable time unit to be used in billing. No changes in billing methodology or hourly rates will be made without the express written approval of Chief Counsel.

C. Billing Cycle

Bills for legal services should be submitted on a monthly basis, for services through the last day of the month in which services are performed. The Board will use best efforts to make payments on invoices within 45 days of receipt, in final form with requisite documentation.

D. Billing Format

Specific billing instructions are set forth in the Contract in Paragraph 4. At a minimum, a copy should be directed to SERS Chief Counsel, and the assigned senior-level SERS litigation manager, where applicable.

All billing statements should include:

- Contract number
- Date task performed
- Identification of attorney/paralegal performing the task with full name and title listed on the statement
- Specific task description
- Time being billed per task
- Hourly rate being charged by the attorney/paralegal
- A summary of the total time and amount charged for each attorney/paralegal
- A specific description of all expenses incurred including the rate charged for copying as limited by the Contract. This description of services should be as specific as possible.

E. Disbursements/Expenses

The Board expects the hourly billing rate to include overhead and internal charges associated with the law firm's practice. The law firm shall require written approval by SERS Chief Counsel before incurring any extraordinary or unusual expenses. Functions such as legal research or photocopying must be billed at cost and may not be profit centers.

The Board **will not pay** separate charges for the following expenses:

- Word processing
- Overtime charges (including overtime local transportation and meal charges)
- Secretarial/clerical time or functions such as collating, scheduling, indexing, creating files or typing, opening or closing files, data entry, updating pleading binders or retrieval of documents from files
- File organization
- Basic overhead charges (local telephone charges, local fax charges, ordinary postage, courier services to the Board)
- Books, subscriptions or educational expenses
- Professional association memberships

- Office supplies
- Preparation and review of bills
- Mark-ups for computerized databases (such as Westlaw and Lexis)
- Storage charges
- Re-education of a new attorney if a file is transferred
- Cellular phone charges
- Training on and maintenance of computer systems

The Board **will pay** for the following when incurred specifically for SERS' matters:

- Filing fees
- Court reporter fees
- Expert witness fees, if approved in advance by SERS Chief Counsel
- Computerized/database research, if approved in advance by SERS Chief Counsel
- Long-distance telephone charges and long-distance fax charges
- Air freight/express mail deliveries, where necessary to meet applicable deadlines, or as may otherwise be approved by SERS Chief Counsel**
- Outside photocopying, binding and printing services, if approved in advance by SERS Chief Counsel
- Outside messenger services**

** While the Board may pay for messenger and express service where warranted, as a general matter, the Board encourages use of e-mail and regular U.S. mail service whenever possible.

F. Travel

Reasonable, actual, ordinary, and necessary expenses for travel, meals, and moderately priced lodging incurred by the law firm to fulfill its obligations under the Contract will be permitted as set forth in the Contract. Prior approval is needed for any air travel and only coach air rates will be reimbursed. Prior approval is needed for any overnight stay. Local travel expenses, such as taxis and trains, are reimbursable.

Personal auto travel will be reimbursed at the mileage rate authorized by the Commonwealth. You are expected to expense only reasonable amounts for meals and non-alcoholic beverages. the Board also does not pay for minibar expenses, sundries, in-hotel movies or similar entertainment charges. The law firm shall retain all receipts and shall, upon request of SERS Chief Counsel, provide any necessary documentation.

G. Legal Research

Counsel should know the legal aspects of the Commonwealth's business for which the law firm has been retained, particularly the areas in which the case or transaction arises, and should keep abreast of developments in the law that may impact its engagement with the Board. Prior approval for extensive legal research is required. The Board should not be charged for routine research on matters of common knowledge among reasonably experienced counsel in the same

geographical location. Where circumstances exist that enable the Law Firm to use its own data or brief banks, the Board should only be charged for updating the previously researched material. The Board expects that paralegals or more junior associates will be used on research matters. All research completed on a SERS matter is the property of SERS and a copy of all significant research projects should be submitted to SERS.

H. Confidentiality and Media Coverage

The Board expects absolute confidentiality regarding legal matters handled by each outside counsel. In addition, no statement may be made to the press or any other media – on or off the record - unless prior express written approval is secured from the Board. Under no circumstances should the Law Firm use its representation of the Board in firm promotional or other informational material without the prior approval of the Board.

EXHIBIT G
DATA AND INFORMATION SECURITY 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 (i) 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
- (ii) 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");

(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.

APPENDIX A

**PROPOSAL COVER SHEET
COMMONWEALTH OF PENNSYLVANIA
STATE EMPLOYEES' RETIREMENT SYSTEM
RFP # 23-024**

Submitted in three separately attached submittals is the proposal of the Law Firm identified below for the above-referenced RFP:

Law Firm Information:	
Law Firm Name	
Law Firm Mailing Address	
Law Firm Website	
Law Firm Contact Person	
Law Firm's Phone Number	
Law Firm's Facsimile Number	
Law Firm's E-Mail Address	
Law Firm Federal ID Number	
Law Firm SAP/SRM Vendor Number	

Submittals Separately Attached:	
Y <input type="checkbox"/>	Technical Submittal
Y <input type="checkbox"/>	Cost Submittal

<i>Signature</i>	
Signature of an official authorized to bind the Offeror to the provisions contained in the Offeror's proposal:	
Printed Name	
Title	

FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM WITH THE OFEROR'S PROPOSAL MAY RESULT IN THE REJECTION OF THE OFFEROR'S PROPOSAL

APPENDIX B

DOMESTIC WORKFORCE UTILIZATION CERTIFICATION

To the extent permitted by the laws and treaties of the United States, each proposal will be scored for its commitment to use the domestic workforce in the fulfillment of the contract. Maximum consideration will be given to those offerors who will perform the contracted direct labor exclusively within the geographical boundaries of the United States or within the geographical boundaries of a country that is a party to the World Trade Organization Government Procurement Agreement. Those who propose to perform a portion of the direct labor outside of the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement will receive a correspondingly smaller score for this criterion. In order to be eligible for any consideration for this criterion, offerors must complete and sign the following certification. This certification will be included as a contractual obligation when the contract is executed. Failure to complete and sign this certification will result in no consideration being given to the offeror for this criterion.

I, _____ **[title]** of _____ **[name of Contractor]**
a _____ **[place of incorporation]** corporation or other legal entity, (“Contractor”) located at

_____ **[address]** do hereby certify and represent to the Commonwealth of Pennsylvania (“Commonwealth”)
(Check **one** of the boxes below):

All of the direct labor performed within the scope of services under the contract will be performed exclusively within the geographical boundaries of the United States or one of the following countries that is a party to the World Trade Organization Government Procurement Agreement: Armenia, Netherland with respect to Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Chinese Taipei, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong China, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea Republic of, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Moldova Republic of, Montenegro, New Zealand, the Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

OR

_____ **percent** (____%) **[Contractor must specify the percentage]** of the direct labor performed within the scope of services under the contract will be performed within the geographical boundaries of the United States or within the geographical boundaries of one of the countries listed above that is a party to the World Trade Organization Government Procurement Agreement. Please identify the direct labor performed under the contract that will be performed outside the United States and not within the geographical boundaries of a party to the World Trade Organization Government Procurement Agreement and identify the country where the direct labor will be performed:

[Use additional sheets if necessary]

The Department of General Services **[or other purchasing agency]** shall treat any misstatement as fraudulent concealment of the true facts punishable under Section 4904 of the *Pennsylvania Crimes Code*, Title 18, of Pa. Consolidated Statutes.

Attest or Witness:

Corporate or Legal Entity's Name

Signature/Date

Signature/Date

Printed Name/Title

Printed Name/Title

APPENDIX C

Trade Secret/Confidential Proprietary Information Notice

Instructions:

The Commonwealth may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential proprietary information unless the materials are accompanied, at the time they are submitted, by this form or a document containing similar information.

It is the responsibility of the party submitting this form to ensure that all statements and assertions made below are legally defensible and accurate. The Commonwealth will not provide a submitting party any advice with regard to trade secret law.

Name of submitting party:

Contact information for submitting party:

Please provide a brief overview of the materials that you are submitting (e.g. bid proposal, grant application, technical schematics):

Please provide a brief explanation of why the materials are being submitted to the Commonwealth (e.g. response to bid #12345, application for grant XYZ being offered by the Department of Health, documents required to be submitted under law ABC)

Please provide a list detailing which portions of the material being submitted you believe constitute a trade secret or confidential proprietary information, and please provide an explanation of why you think those materials constitute a trade secret or confidential proprietary information. Also, please mark the submitted material in such a way to allow a reviewer to easily distinguish between the parts referenced below. (You may attach additional pages if needed)

Note: The following information will not be considered a trade secret or confidential proprietary information:

- Any information submitted as part of a vendor's cost proposal
- Information submitted as part of a vendor's technical response that does not pertain to specific business practices or product specification
- Information submitted as part of a vendor's technical or small diverse business response that is otherwise publicly available or otherwise easily obtained
- Information detailing the name, quantity, and price paid for any product or service being purchased by the Commonwealth

Acknowledgment

The undersigned party hereby agrees that it has read and completed this form, and has marked the material being submitted in accordance with the instructions above. The undersigned party acknowledges that the Commonwealth is not liable for the use or disclosure of trade secret data or confidential proprietary information that has not been clearly marked as such, and which was not accompanied by a specific explanation included with this form.

The undersigned agrees to defend any action seeking release of the materials it believes to be trade secret or confidential, and indemnify and hold harmless the Commonwealth, its agents and employees, from any judgments awarded against the Commonwealth in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives so long as the Commonwealth has possession of the submitted material, and will apply to all costs unless and until the undersigned provides a written statement or similar notice to the Commonwealth stating that it no longer wishes to exempt the submitted material from public disclosure.

The undersigned acknowledges that the Commonwealth is required to keep all records for at least as long as specified in its published records retention schedule.

The undersigned acknowledges that the Commonwealth reserves the right to reject the undersigned's claim of trade secret/confidential proprietary information if the Commonwealth determines that the undersigned has not met the burden of establishing that the information constitutes a trade secret or is confidential. The undersigned also acknowledges that if only a certain part of the submitted material is found to constitute a trade secret or is confidential, the remainder of the submitted material will become public; only the protected information will be removed and remain nonpublic.

If being submitted electronically, the undersigned agrees that the mark below is a valid electronic signature.

Signature

Title

Date

APPENDIX D



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania's Unemployment Compensation Law, Workers' Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. §531 (Debarment or suspension).

CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee's compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. §4904 (Unsworn falsification to authorities).

<i>Signature</i>	<i>Date</i>
<i>Name (Printed)</i>	
<i>Title of Certifying Official (Printed)</i>	
<i>Contractor/Grantee Name (Printed)</i>	

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APPENDIX E

STATEMENT OF QUALIFICATIONS/TECHNICAL QUESTIONNAIRE

Name of Law Firm:

Address(es) of Law Firm:

Telephone Number of Law Firm:

Name and Title of Individual Completing this Form:

Telephone Number of Individual Completing this Form:

****Law Firms are expected to use this Technical Questionnaire in conjunction with the Statement of Work contained in this RFP.****

1. Provide a general description of the law firm or legal practice, including years of existence, size, number of attorneys (broken down by partner, associate, of counsel, etc.), number of non-attorney professionals and other employees, its practice group areas, size of the law practice group relevant to this engagement, and other descriptive material about the firm.
2. Confirm and describe the Law Firm's capability of providing services before all Pennsylvania state and federal courts and the Internal Revenue Service.
3. Confirm the Law Firm has five (5) or more years' experience in representing statewide and municipal public pension plans and any other public pension plans, including agency multiple employer plans, in the tax and benefits arena.
4. Identify the attorney who will provide the primary work under the contract, and each attorney or non-attorney professional who will provide work under the contract, broken down by percentage of the total contract to be spent by the individual on work under the contract.
5. Provide the following information regarding the professional and experience qualifications of each attorney who will perform work under the contract:
 - (a) A list of each attorney of the Law Firm's law practice group who will be providing services to SERS as part of the engagement and the attorney's specific experience working for and representing a statewide and municipal public pension plans generally or other public pension plan before the IRS. This list must include a brief description of the plans previously represented by each attorney, the size of each plan (number of employees and employers) and the types of programs offered by each plan.

- (b) A CV or resume for each attorney outlining each attorney's background.
 - (c) A list of each attorney or non-attorney professional's publications regarding public employee retirement plans or ERISA-covered plans.
 - (d) A list of each attorney's experience teaching or making presentations to local or national organizations whose members represent public employee retirement plans.
 - (e) A list of each attorney's experience practicing before the Internal Revenue Service (IRS), any experience with the determination letter process and any experience representing a public or private employee retirement plan during an IRS audit or examination or using the Employee Plans Compliance Resolution System (including the voluntary and self-correction programs), including the outcome of such representation.
 - (f) A list of disciplinary action, if any, taken by any professional organization, governmental licensing agency or other regulatory body, against each attorney.
 - (g) The number of years each attorney has represented or worked for a municipal or statewide public pension plan or if providing tax representation or work, for another public pension plan.
 - (h) Confirm each attorney is admitted to a State(s) Bar and is a member in good standing.
 - (i) Complete Appendix F – Personnel Experience by Key Position by listing each identified individual.
6. Describe the anticipated division of duties among partners, associates, and paralegals.
 7. Describe how the Law Firm normally provides periodic update reports to its clients to keep them apprised of an engagement's status.
 8. Identify any additional attorneys within the Law Firm, including their expertise, who may be available for consultation even though they are not assigned to this engagement.
 9. List the address for each office of the Law Firm in Pennsylvania.
 10. Provide detailed descriptions of:
 - (a) Any litigation or administrative proceeding in which the Law Firm was a party in any matter related to the professional activities of the Law Firm during the five (5) years prior to the date of this RFP;

- (b) Any pending litigation, investigation, or proceeding in which a court or administrative agency is addressing any question relating to the professional activities of the Law Firm; and
 - (c) Any litigation or threatened litigation in connection with services rendered by the Law Firm as legal counsel and/or as special or in-house counsel or in connection with any opinion rendered by the Law Firm within the last seven (7) years.
11. State the availability of and provide acknowledgement that specifically identified legal counsel and senior personnel will be committed to SERS' matters as contemplated by this engagement.
12. Provide written acknowledgment that the Law Firm will comply with the Office of General Counsel's (OGC) Conflict Waiver Policy, a copy of which is attached to the *Standard Contract for Legal Services*.
- (a) Describe any existing or potential conflict of interest arising from the Law Firm's relationships with or representation of other parties. A conflict shall include, but is not limited to, the representation of any party in a matter adverse to the Commonwealth, SERS or to any Commonwealth agency for which SERS Chief Counsel has not previously granted a conflict waiver. This includes potential conflicts for any proposed subcontractor. As set forth under Section 4.C. of the Statement of Work of this RFP, failure to disclose a conflict is grounds for rejection of a proposal, or removal or suspension from an engagement.
 - (b) Provide sufficient facts, legal implications, and possible effects for any matter as described above so that the Board may evaluate the significance of each potential conflict.
 - (c) Represent and warrant, in writing, that the Law Firm has no conflicting representations that have not been fully disclosed to and waived by the General Counsel.
 - (d) Represent and warrant that the Law Firm shall not undertake any representation that conflicts with the performance of the services or obligations as described hereunder unless such conflicting representation has been fully disclosed to and waived by the the Board. Any and all conflicting representation shall be promptly disclosed to SERS Chief Counsel.
13. Confirm that the Law Firm will perform legal services in accordance with the terms and conditions of the *Standard Contract for Legal Services* as provided herein and attached hereto.
14. Confirm that the Law Firm has and will maintain in full force and effect, during the term of the resulting Contract for Legal Services, professional liability insurance in the amount usual and customary for a business and/or firm of its size and practice area subject to

normal deductibles and provide a copy of such Certificate of Insurance. Upon execution of any resulting Contract for Legal Services, the Law Firm shall provide evidence that the Commonwealth is named as an additional insured.

APPENDIX G

COST SUBMITTAL

The Firm shall be paid at the following rates:

1. Senior Partners will be billed at a rate of \$____per hour;
2. Partners will be billed at a rate of \$____ per hour;
3. Senior Associates will be billed at a rate of \$_____ per hour;
4. Associates will be billed at a rate of \$_____ per hour; and
5. Paralegals will be billed at a rate of \$_____ per hour.

The Law Firm shall not bill for travel time to fulfill the Law Firm's obligations under this Contract involved in the performance of services under this Contract.