REQUEST FOR PROPOSALS

RFP# 21-02

Independent Audit

New York State
Teachers’ Retirement System

10 Corporate Woods Drive
Albany, New York 12211-2395
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## Attachments

- **Appendix A**  Standard Clauses for New York State Contracts
- **Appendix B**  General Information Provided to Prospective Bidders
- **Appendix C**  Contract Provisions
- **Appendix D**  Insurance Requirements
- **Exhibit 1**  Response Template
- **Exhibit 2**  Vendor Responsibility Questionnaire
- **Exhibit 3**  Technology Questionnaire
- **Exhibit 4**  Conflict of Interest Disclosure
- **Exhibit 5**  Cost Proposal

Conflicts between the above-mentioned documents shall be resolved in the following descending order of precedence:

1. Appendix A;
2. This RFP;
3. Appendix D;
4. Appendix B.
1. INTRODUCTION TO NYSTRS

Created in 1921 by an act of the state Legislature, New York State Teachers’ Retirement System (“NYSTRS” or “System”) administers the fund from which most New York State public school teachers and administrators receive retirement and ancillary benefits. Retirement benefits are provided in accordance with New York State law and may not under the New York Constitution be diminished or impaired.

The System is governed by a 10-member Board of Trustees, which sets policy and oversees operations consistent with its fiduciary obligations under applicable law. A staff of approximately 380 is responsible for the day-to-day administration. NYSTRS serves 823 employers — including public school districts, BOCES, institutions of higher education and charter schools that elect to participate. As of June 30, 2019, NYSTRS has 432,720 active and retired members, including beneficiaries.

The retirement fund is one of the 10 largest public funds in the U.S. based on portfolio size. NYSTRS is also consistently among the top-performing and best-funded public pension plans. Consistent receipt of required employee and employer contributions; a disciplined, risk-controlled investment policy; and, partnerships with top-performing fund managers are major contributing factors to this stability. As a long-term investor with liabilities often not payable for three decades or more, Board and staff take a prudent approach to asset management.

Further information and a copy of the latest NYSTRS Comprehensive Annual Financial Report can be found on NYSTRS’s website, https://www.nystrs.org/Library/Publications/Annual-Report.

2. CALENDAR OF EVENTS

<table>
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<th>Event Description</th>
<th>Date</th>
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<tr>
<td>RFP Issued</td>
<td>8/24/2020</td>
</tr>
<tr>
<td>Last Date for Inquiries</td>
<td>9/3/2020 (close of business)</td>
</tr>
<tr>
<td>Responses to Inquiries/Clarifications Sent Out</td>
<td>9/9/2020</td>
</tr>
<tr>
<td>Response Due Date</td>
<td>9/18/2020, 11:00 a.m. (ET)</td>
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<tr>
<td>Notification to Finalist(s)</td>
<td>10/5/2020 (on our about)</td>
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<tr>
<td>Interview of Finalist(s) by Evaluation Committee*</td>
<td>10/14/2020</td>
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<tr>
<td>Oral Presentation to the Audit Committee of the Retirement Board*</td>
<td>10/28/2020</td>
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<tr>
<td>Award</td>
<td>11/2/2020 (on or about)</td>
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*Conducted at NYSTRS’ sole discretion. Notice will be provided to the finalist(s) the week before.

All dates are subject to change, at NYSTRS sole discretion.

3. PURPOSE

NYSTRS is requesting proposals from qualified, licensed independent Certified Public Accounting firms to conduct independent annual audits of the financial statements of the System, as well as the System’s Schedules of Employer Allocations and Pension Amounts by Employer in accordance with the services described herein. The initial audit will be for the fiscal year ending June 30, 2021.

NYSTRS intends to make a single award to the responsive and responsible Bidder, as determined by the evaluation process. The contract term will be for five (5) years. The awarded Bidder will be required to enter into a contract with NYSTRS, similar in form and substance to the sample contract attached hereto as Appendix C.

4. ISSUING OFFICE

This solicitation includes and imposes certain restrictions on communications between NYSTRS and a Bidder during the procurement process. A Bidder is restricted from contacting any NYSTRS staff, from the earliest notice of intent to solicit offers through final award and approval of the procurement contract, other than Designated Staff specified
In accordance with State Finance Law §139-(j) & (k), any attempts to contact staff other than the Designated Contact, and any attempt to influence the award of a contract, must be recorded and reported.

Unless otherwise expressly authorized, all proposals, specifications, inquiries, formal correspondence, and other Bidder communications shall be limited and directed to the sole point of contact below, or her designee, as follows.

Michelle Gilchrist
E-mail: Michelle.Gilchrist@nystrs.org
Fax: (518) 431-8784

Information on proposal submission is detailed in Sections 17-18.

5. AMBIGUITY, CONFLICT, DISCREPANCY OR OTHER ERROR

If a Bidder discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, the Bidder should promptly notify the Designated Contact of such ambiguity, conflict, discrepancy, omission or other error and affirmatively request in writing a clarification or modification of the document. If a Bidder fails to point out such ambiguity, conflict, discrepancy, omission or other error prior to proposal submission, such issue(s) cannot be raised after proposals have been opened because they could be used to a Bidder’s advantage during the award process and un-level the playing field with other Bidders. Consequently, Bidders assume all risks. If awarded the contract, the Bidder shall not be entitled to additional compensation or time by reason of the error or its late correction.

6. INQUIRIES & QUESTIONS

Requests for clarification and questions the Bidders may have regarding the specifications and/or requirements (“inquiries”) must be submitted in writing and received by the Issuing Office no later than the date and time indicated in the Calendar of Events.

Inquiries shall be faxed or e-mailed to the Designated Contact. Inquiries must cite the particular page, section and paragraph number, where applicable. Inquiries may not be accepted beyond the deadline for submission of inquiries noted above. Inquiries concerning the RFP should be clearly identified in the subject line as “RFP 21-02.”

A list of inquiries received and NYSTRS responses (an “Amendment”) will be emailed by the date and time indicated in the Calendar of Events to all Bidders that have been furnished a copy of this RFP by NYSTRS. The Amendment will also be posted on NYSTRS’ procurement webpage (https://www.nystrs.org/About-Us/Procurement-Information; click on the banner “Requests for Proposals or Quotes”).

7. STANDARD CLAUSES FOR NYS CONTRACTS AND GENERAL INFORMATION FOR BIDDERS

“Standard Clauses for New York State Contracts,” attached hereto as Appendix A, and “General Information Provided to Prospective Bidders,” attached hereto as Appendix B, are incorporated herein by reference. The terms contained in these two documents govern this bid process and the resulting contract.

8. ETHICS COMPLIANCE

Bidder and its employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. By submitting a bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving NYSTRS and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

9. NYS WOMEN-, MINORITY-, AND SERVICE-DISABLED VETERAN-OWNED BUSINESSES

It is the policy of NYSTRS to encourage the greatest possible participation by Minority-, Women-, and Service-Disabled Veteran-Owned Business Enterprises (MWSDVBE) as bidders, subcontractors and suppliers on its procurement
contracts. Bidders are encouraged to use the NYS Contract Reporter’s Business Registry to identify potential MWSDVBE partners.

NYSTRS encourages firms submitting a response to this RFP to review and design their approach, work plan and scheduling, for the purpose expanding opportunities for MWSDVBEs at the subcontractor level and increase competition and diversity in procurements.

10. PROPOSAL OWNERSHIP

All proposals and accompanying documentation become the property of NYSTRS and will not be returned. NYSTRS reserves the right to use any of the portions of the Bidder’s proposal not specifically noted as proprietary.

11. BIDDER’S KNOWLEDGE

The submission of a bid or proposal shall be deemed proof that the Bidder is satisfied as to all the provisions of the proposal*, of all the conditions which may be encountered, of what materials/services they will be required to supply, or any other matter which may enter into the carrying out of conditions of the proposal, to a satisfactory conclusion. No claims will be entertained by NYSTRS based on the assertion by a Bidder that they were uninformed as to any of the provisions or conditions intended to be covered by this proposal.

12. CLAIMS

Claims made in the proposal shall constitute contractual warranties. Any contract resulting from this RFP will incorporate, at a minimum, this RFP and the awarded Bidder’s proposal. NYSTRS considers each provision in this proposal of importance and will not accept alterations which destroy the fundamental intent thereof. If alterations are suggested, their wording should be carefully considered, since an unacceptable alteration to any provision may affect the acceptance of the Bidder’s proposal.

See Exhibit 1, Response Template, section labeled “Exceptions” for additional information.

13. MANDATORY REQUIREMENTS

13.1. As of the bid due date, the bidding firm must have at least 7 years providing auditing services to Public Employee Retirement System (PERS);

13.2. The partner assigned to the contract must have at least 7 years of experience providing auditing services to PERS;

13.3. The contractor shall make the auditor’s work papers and any communications with NYSTRS available for review by New York State Department of Financial Services (DFS);

13.4. Bidder shall be in compliance with all applicable laws, rules, and regulations during performance of the contract.

13.5. As part of any contract for services, NYSTRS requires the consultant to carry applicable insurance coverage and minimum liability limits. Please refer to Appendix D for insurance requirements.

13.6. In order to receive a contract award, the Bidder must have legal authority to conduct business in New York State and must be appropriately registered with the New York State Department of State or other applicable regulatory body.

13.7. NYSTRS reserves the right to conduct background checks for any of Bidder’s staff assigned to this contract.

14. OVERVIEW OF NYSTRS

14.1. Nature of Entity

NYSTRS is a Public Employee Retirement System (PERS), created and existing pursuant to Article 11 of the Education Law with all the powers and privileges of a corporation. NYSTRS is a defined benefit plan that commenced business in August 1921. Many departments within NYSTRS, depicted on page 8 of the CAFR, contribute toward our primary
mission to provide retirement allowances and other specified benefits for its members. The foregoing legislation establishes the basis of substantially all of NYSTRS’ significant accounting policies. A link to our website containing Article 11 of the Education Law and a link to other laws affecting NYSTRS’ operations may be found on the Table of Contents hereof, and are incorporated herein by reference.

14.2. Record Keeping

NYSTRS maintains accounting records on the accrual basis. NYSTRS has received the Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting for its comprehensive annual financial report since 1995.

The Administrative Fund has a budget established each year against which revenues, expenditures, appropriations and encumbrances are recorded. The General Ledger and most subsidiary ledgers are computerized. The documentation of these systems will be made available to you.

As of June 30, 2019, NYSTRS had net assets in excess of $122 billion. The primary investment classes include domestic and global fixed income securities, domestic and global equities, mortgages, real estate and alternative investments. Pursuant to Section 507 of the Education Law, the Deputy Commissioner and Treasurer of the Department of Taxation and Finance is the Statutory Custodian. The physical custody and safekeeping of stocks and bonds has been turned over to a custodial bank, State Street Bank and Trust Company located in Boston, MA, pursuant to authority granted by Section 178a of the New York Retirement and Social Security Law. The custodial bank maintains all bonds and stocks in nominee name and/or book entry through DTC or FBE. The custodial bank collects all interest and dividends and credits them to our account. NYSTRS receives activity notifications daily and inventory listings at least twice monthly. State Street provides two SOC 1 reports to NYSTRS every 6 months: Information Technology General Controls (ITGC) and Global Fund Accounting and Custody System (GFAC). Mortgage documents are maintained at NYSTRS’ headquarters.

NYSTRS uses the following accounting and investment systems:

- PeopleSoft HRMS 9.2 (HR, Pension, Payroll) and Financials 9.2 (GL, AP);
- PORTIA® (SS&C – public securities);
- Private i® (The Burgiss Group LLC - private equity);
- PAMmort™ (Princeton Financial Systems, Inc. - mortgage asset management); and
- For externally managed public securities NYSTRS relies upon the custodian as the official book of record and does not maintain record keeping for these portfolios in-house.

14.3. Internal Audit

The Internal Audit Department reports functionally to the Audit Committee and administratively to the Executive Director. It has no operating responsibilities. The staff presently consists of seven (7) auditors and three (3) vacancies. Five of the seven professional auditors are credentialed and collectively possess 3 CPA licenses, 5 CIA certificates, 3 CISA certificates, 2 CIDA certificates and 2 CFE certificates, among others. Pursuant to a Board approved charter, the Director of Internal Audit and staff of the Internal Audit Department are authorized to have full, free, and unrestricted access to all NYSTRS activities, records, property, and personnel. Per the Charter, the Internal Audit Department follows the Standards for the Professional Practice of Internal Auditing promulgated by the Institute of Internal Auditors and is, accordingly, peer reviewed every five years. The Internal Audit Plan, and all Internal Audit reports and associated working papers (housed in TeamMate™) will be made available to the external auditor upon request. Internal audit staff will be available to directly assist the independent auditors with the audits. Direct assistance provided by Internal Audit during the 2019 audit consists of 120 hours of general audit assistance.

14.4. Actuary

The Office of the Actuary at NYSTRS provides in-house actuarial services to NYSTRS. The Actuarial Department is responsible for providing all actuarial valuations, cost estimates, and statistical analyses as they relate to NYSTRS. The department acts as a technical resource for NYSTRS as well as the executive and legislative branches of the State government and all constituent organizations. The employer contribution rate is determined annually in accordance
with an actuarial valuation of NYSTRS assets and liabilities. A copy of the System’s most recent Actuarial Valuation Report (6/30/18) can be found on the System’s website. With respect to such valuation report, NYSTRS engaged a qualified, independent actuarial firm to provide an evaluation sufficient to allow the consultant to express an opinion regarding the reasonableness and/or accuracy of valuation results, actuarial assumptions, funded percentage, employer contribution rate and application of the actuarial cost method.

Actuarial staff members will be readily available to provide information, documentation, explanations and access to systems as needed to facilitate the audits.

The actuarial software used to perform the valuation is ProVal - produced and maintained by WinTech - Winklevoss Technologies, LLC. A member of the Actuarial Department will act as the liaison with WinTech regarding software-related questions.

14.5. Finance

The Finance department, as part of the Office of CFO, manages the General Fund and Administrative Expense Fund including: Accounting Operations; Finance Systems; Payroll and Tax; Procurement; Analysis, Risk and Controls; Financial Accounting and Reporting; and Cash Control. This allows the department to provide strong financial stewardship of our members' future while servicing our members, Retirement Board, System employees, and other internal/external customers. The Finance department is comprised of several units, detailed below.

14.5.1. Accounting Operations

Responsible for processing all receipts and disbursements of the System; petty cash reimbursements and train ticket requests.

14.5.2. Finance Systems

Responsible for the assessment of Finance Department processes to determine how information technology can be used to improve operations, efficiency, and controls.

14.5.3. Payroll & Tax

Coordinates and processes the bi-weekly employee payroll; monthly retiree payroll and the daily member payroll (loans, withdrawals, etc.); provides tax information to active and retired members, and annually produces Forms 1099’s and W-2’s.

14.5.4. Procurement

Ensures proper purchasing procedures are followed and oversees the procurement method in accordance with administrative policy; obtains goods and services, which best meet the business goals of NYSTRS at the best price, and is instrumental in third-party problem resolution with bidders, suppliers and contractors. In addition, the unit is responsible for assisting requesting departments with drafting specifications for quotes, invitations for bids (IFBs) and requests for proposals (RFPs); and oversees formal evaluation processes.

14.5.5. Analysis, Risk and Controls

Responsible for the financial analysis tasks and assessment of Finance-related risks and controls for mitigation and improvement.

14.5.6. Financial Accounting and Reporting

Financial Accounting and Reporting Coordinates with the Investment Operations Department to ensure that the official books and records accurately reflect the System’s financial condition. The unit is responsible for all accounting entries, trial balances and sub-ledgers for the General Fund, Administrative Expense Fund and the OPEB Trust.

14.5.6. Cash Control

Cash Control unit is the cash desk for the Finance Department and handles the banking transactions related to non-investment transactions, including all member and vendor related payments.
14.6. Investment Operations Department

The Investment Operations department, as part of the Office of CFO, is responsible for the proper accounting, custody and monitoring of System investments and cash movement, including compliance with System investment policies, to ensure timely funding of payment commitments and collection of all investment entitlements. In addition, the department provides timely, accurate, and relevant information about System investment holdings to internal and external customers.

15. SCOPE OF WORK

Working papers developed and maintained by the auditor during the engagement are to be made available to NYSTRS, its designee or regulator for seven (7) years following the year of the audit. NYSTRS is regulated by the NYS Department of Financial Services (DFS), which conducts a formal examination of the System once every five (5) years. During previous examinations, the DFS has reviewed the audit working papers of the System’s external auditors. The next DFS examination is expected to take place during the 2022-23 fiscal year, with a scope of the five (5) years ended June 30, 2021.

15.1. Required Services

15.1.1. Perform an annual audit of the System’s financial statements in accordance with audit standards generally accepted in the United States of America and express an opinion as to whether the financial statements present fairly, in all material respects, the plan net assets of the System as of the applicable June 30, 202X and 202Y and changes in plan net assets for the years then ended in conformity with U.S. generally accepted accounting principles. The audit shall include tests of the accounting and other supporting records (including census data) as deemed necessary by the independent auditor in order to express such opinion.

15.1.2. Perform an independent actuarial review of the actuarial assumptions, methods and procedures used by the System’s Actuary to calculate the pension benefit obligation and employer contributions for the plan, in accordance with generally accepted actuarial principles and practices as set forth in Actuarial Standard of Practice No. 4 and fairly represented in accordance with Statement No. 67 of the Governmental Accounting Standards Board. Provide an independent actuarial review opinion suitable for publication in the System’s CAFR. The form and content of such opinion shall be materially and substantially the same as the one published on page 108 of NYSTRS CAFR for fiscal year ended 6/30/19.

15.1.3. Perform an annual audit of the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer in accordance with audit standards generally accepted in the United States of America and express an opinion as to whether those schedules and accompanying notes present fairly, in all material respects, the audited elements for the specified year ended June 30, 201X, in accordance with U.S. generally accepted accounting principles. These schedules, referred to as the “GASB 68 Schedules,” are the result of AICPA guidance found in their whitepaper titled “Governmental Employer Participation in Cost-Sharing Multi-Employer Plans: Issues Related to Information for Employer Reporting.” See the GASB 68 Schedules for the year ended June 30, 2019 for more information.

15.1.4. Address completed reports to the Retirement Board, New York State Teachers’ Retirement System.

15.1.5. Complete the financial statement audits and issue the audit reports by mid-October of each year. (Note: The System fiscal years end June 30th) Complete the audit of the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer by mid-November of each year. Note: The preparation of these schedules follows the preparation and audit of the System’s financial statements. Further, the reporting deadlines for certain participating employers requires the System to provide audited schedules on or about December 1 so that the participating employers can extract the information they need to meet their financial reporting deadlines. Consequently, there is a very short time frame to complete this audit and the contractor will need to have resources ready and available to commence this audit as soon as the in-house preparation of the schedules is complete.
15.1.6. The partner-in-charge of the engagement will present the financial statement audit reports pertaining to the System to the Audit Committee of the Retirement Board at the October meeting of the Retirement Board. Additionally, the partner-in-charge of the engagement will present the audit reports pertaining to the “GASB 68 Schedules” to the Audit Committee of the Retirement Board at its December meeting. Further, the partner-in-charge of the engagement (or delegate) will present the audit plan at the March meeting of the Audit Committee and a status of the audits in progress at the September meeting of the Audit Committee. The partner-in-charge of the engagement (or delegate) will attend the June and December meetings of the Audit Committee, and present as necessary. Meetings are subject to change, to meet the needs of the Retirement Board.

15.1.7. Keep NYSTRS informed of all current events affecting Public Employee Retirement Systems (PERS), including an analysis of proposed accounting standards and federal tax matters. Furthermore, we will have an occasional need to consult with the accounting firm’s technical specialists to solve technical and work-related problems.

15.1.8. NYSTRS may from time to time require additional services beyond the scope of these specifications. Should NYSTRS require such additional services and the contractor agrees to provide these services, a formal statement of work will be developed and the hourly rates provided on the fee schedule will be used as the basis for compensation. Please note, however, this does not represent an intention or commitment by NYSTRS to grant exclusive right to the contractor to provide said additional services.

15.2. Assistance Available

It is the intention of NYSTRS to assist the independent auditors as much as possible.

15.2.1. Finance, Investment Operations and Actuarial Department staff will be available to prepare schedules, retrieve documents and generally accomplish the routine requirements where possible.

15.2.2. The Information Technology (IT) Departments will be available to assist wherever possible.

15.2.3. The Internal Audit Department will be available to directly assist in the audit pursuant to SAS 128, “Using the Work of Internal Auditors.”

15.2.4. NYSTRS is prepared to provide written representations as applicable to the System relating to: the financial statements and the Schedule of Employer Allocations and Schedule of Pension Amounts by Employer; completeness of information; recognition, measurement, and disclosure; subsequent events; and other matters to address specific inquiries made by the auditor as required by the auditing standards generally accepted in the United States of America.

15.2.5. If necessary, NYSTRS will provide reasonable work space in close proximity to the necessary records. However, due to the current pandemic restrictions, NYSTRS encourages the firm to work remotely as much as possible.

15.2.6. We anticipate that the work papers of our previous independent auditor will be made available to the awarded firm.

15.3. Work Schedules

By March 1 of each contract year, the contractor must submit a detailed audit work plan, time schedule, staffing assignment, and a list of any System-prepared work schedules.

16. FEES; INVOICING

Bidders shall provide an all-inclusive, lump-sum fee for each of the required services (see section 15.1), using the Cost Proposal form provided (Exhibit 5). Annually, each service shall be invoiced as follows:

16.1. System Audit

- 20% shall be invoiced 8/1
20% shall be invoiced 9/1
20% shall be invoiced 10/1
40% shall be invoiced after presenting the report to the Audit Committee at the October meeting of the Retirement Board.

16.2. **Actuarial Report:** 100% invoiced after delivery of the actuarial letter

16.3. **GASB-68 Schedules:** 100% invoiced upon delivery of the report

16.4. **Additional Services**
Bidder shall provide hourly rates by title, for additional services that may be requested by NYSTRS.

16.5. **Expenses**
Out-of-pocket costs (e.g. travel expenses) will not be reimbursed. Bid price must include all direct and indirect costs, including, but not limited to, travel, meals, lodging, direct labor costs, overhead/profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, reproduction and any other costs necessary for the provision of services. No other fees will be allowed with respect to the annual audit.

16.6. **Notice of RFP for the Audit Services for NYSTRS Retired Employee Health Benefits Trust**
NYSTRS is simultaneously releasing a Request for Proposals for the Audit of the Financial Statements of the NYSTRS Retired Employee Health Benefits Trust, RFP 21-03. Any firm that intends to bid on both RFPs should complete the additional cost proposal form included in RFP 21-03, indicating discounted pricing should your firm be awarded both contracts.

17. **PROPOSAL SUBMISSION REQUIREMENTS**

17.1. To be considered for a contract award, Bidder must submit a complete response to this RFP in conformance with the format and content requirements set forth herein. A proposal that does not provide all the information requested herein, in the order described, may be deemed nonresponsive and is subject to rejection. It is the Bidder’s responsibility to provide all required information, including required attachments, and to satisfy all the requirements cited in this RFP. Submission of proposals in a manner other than as described in these instructions will not be accepted.

17.2. A Proposal Checklist is located on page fourteen, to assist Bidders in compilation of proposals.

17.3. Bids must be emailed or faxed to the Designated Contact by **11:00 a.m. on 9/18/2020** (ET). The subject line must be noted as “Proposal for RFP 21-02.”

17.4. Late proposals will not be considered. Bidders assume all risks for timely, properly submitted bid deliveries, and are encouraged to submit proposals prior to the due date.

17.5. Bidders are encouraged to request a “delivery” or “read” receipt, as the Designated Contact may not be able to affirmatively confirm receipt of proposals prior to the deadline.

17.6. The completed fee schedule (Exhibit 5) must be included as a separate attachment, clearly marked as “Cost Proposal.” No references to costs shall be included in the technical proposal.

17.7. Failure to utilize the forms provided or follow the format described herein may result in disqualification of your bid.

17.8. NYSTRS does not require, nor desire, any excessive promotional material which does not specifically address the response requirements of this RFP. Bidders are asked to keep their submissions to the shortest length consistent with making a complete presentation of qualifications.

18. **PROPOSAL FORMAT AND CONTENT**
Provide the following information in the order requested and using the forms provided, where applicable.

18.1. Response Template (Exhibit 1)
18.2. Vendor Responsibility Questionnaire (Exhibit 2)
18.3. Technology Questionnaire (Exhibit 3)

Bidders must complete the attached Technology Questionnaire or provide one of the following:

- Most current SSAE-18 Type II Certification report(s); or
- Consensus Assessments Initiative Questionnaire (CAIQ); or
- A similar assessment, which meets or exceeds SSAE18 Type 2 examination audit objectives for physical and environmental security, information security, data confidentiality and privacy, print and mail operational controls, availability and access controls, and subservice organization controls, as applicable.

18.4. Conflict of Interest Disclosure (Exhibit 4)
18.5. Cost Proposal (Exhibit 5)
18.6. Legal Authority.

Bidders shall provide proof of its authority to conduct business in NYS. The following are acceptable forms of documentation to satisfy this requirement (only one form of proof required).

- Copy of the official filing receipt from the New York State Department of State;
- Copy of registration, license, or permit from the applicable New York State or local regulatory entity;
- Certificate of Good Standing (or equivalent) from the applicable jurisdiction in which such legal entity was formed or incorporated.

19. EVALUATION OVERVIEW

19.1. Basis of Award

Award will be made on the basis of best value (the proposal which optimizes quality, cost and efficiency) to the responsive and responsible Bidder, as determined by the evaluation process. The contract will not be awarded solely on the basis of low bid. However, the Bidder with the lowest-priced bid may be awarded the contract if it provides the best value.

The evaluation of qualifications will include, but not be limited to, such factors as responsiveness to the RFP, understanding and commitment to the work to be performed, experience of the firm, experience and qualifications of the staff assigned, methodology, and fees.

NYSTRS will consider capabilities or advantages that are clearly described in the proposal, confirmed by oral presentations or demonstrations, if required, and verified by information from reference sources contacted by NYSTRS. NYSTRS reserves the right to contact individuals, entities, or organizations that have had recent dealings with the Bidder or staff proposed for this effort, whether or not the Bidder identifies them.

The final award will be based on the submission that complies with the provisions of this bid solicitation, including specifications, contractual terms and conditions, and who can reasonably be expected to provide satisfactory performance on the proposed contract based on reputation, references, performance on previous contracts, and sufficiency of financial and other resources. No proposal shall be deemed to be accepted by NYSTRS until such time as notice in writing of the acceptance thereof has been forwarded by NYSTRS to the awarded Bidder.

20. EVALUATION PROCESS

All responsive bids will be reviewed to ensure Bidder meets the mandatory requirements. Any bid that does not meet the mandatory requirements will be disqualified. In addition, proposals will be evaluated for existing or potential
conflicts of interest. NYSTRS reserves the right to disqualify a Bidder if, in NYSTRS’ sole opinion, the proposal does not pass the evaluation for any of the evaluation criteria.

For all qualifying bids, the evaluation process shall be conducted as follows:

20.1. Each member of the Evaluation Committee (the “Committee”) shall independently review and score each Bidder’s technical proposal.

20.2. The technical scores of each Committee member shall be averaged to develop a Preliminary Technical Score.

20.3. One or more of the top-scored Bidders may be selected as finalist(s) and will be interviewed by the Committee. Selection of finalist(s) may be based solely on the Preliminary Technical Scores.

20.4. The Committee may revise their original scores based on the information and clarifications provided during the interview. These revised scores shall be averaged to develop a Revised Technical Score.

20.5. Cost scores will be independently developed, in accordance with section 21.2 below.

20.6. Revised Technical Scores shall be combined with the cost scores to produce a Total Score.

20.7. The Bidder with the highest Total Score shall be recommended for contract award. Such award is subject to approval by the Audit Committee and the Retirement Board.

20.8. The firm recommended for contract award may be required to provide an oral presentation to the Audit Committee of the Retirement Board.

At any time during the evaluation process, NYSTRS may require clarification or supplemental information from a Bidder for the purpose of assuring NYSTRS’ full understanding of the Bidder’s responsiveness to the RFP requirements. This clarification or supplemental information must be submitted in writing and will be included as a formal part of the Bidder’s proposal.

21. EVALUATION CRITERIA AND WEIGHTING

21.1. Technical scores are worth 80%, and are comprised of:
   • Work Plan - 25%
   • Firm’s Technical Experience - 25%
   • Qualifications of firm and proposed staff - 30%

21.2. Cost scores are worth 20%.

The Grand Total cost for the required services will be ranked relative to other proposals received. The proposal having the lowest Grand Total will receive the total points awarded for this category. Points for the other proposals will be determined based on the relationship of lowest cost proposal (numerator) to the cost of the proposal being evaluated (denominator), times the total possible points for the category.

21.3. Administrative Burden

All bids will be evaluated on the completeness and quality of the content. Only those Bidders providing complete information as required herein will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

Proposals must provide straightforward, concise proof of Bidder’s capabilities to satisfy the RFP requirements. For ease of review, responses must be provided using the forms attached hereto and must be organized in the exact same order as stipulated in the RFP. Any additional documents provided by the Bidder must reference the appropriate section of the RFP. All requested information must be included, and all forms completed in entirety. Any proposals that do not include all required information may be considered non-responsive and subject to disqualification.

NYSTRS, in its sole discretion, will determine whether the Bidder has submitted all required documentation, forms, and addendums, and conforms to the format for proposals as prescribed in the RFP (a “responsive bid”).
21.4. Clarifications/Revisions

NYSTRS reserves the right to seek clarifications for purposes of fully understanding responsiveness to solicitation requirements, and seek revisions from all Bidders capable of receiving award. Nothing in the foregoing shall mean or imply that it is obligatory upon NYSTRS to allow clarifications or adjustments of bids as provided for herein. Failure of a Bidder to cooperate with NYSTRS’ effort to clarify a proposal may result in the proposal being labeled as non-responsive and may result in rejection of the bid.

Additionally, NYSTRS reserves the right to use information submitted by the Bidder in response to a request for clarifying information in the course of evaluation and selection under this RFP.

Other than to provide such information as may be requested by NYSTRS, no Bidder will be allowed to alter its proposal or add new information after the final filing date and time. Methods of clarification and validation include but are not limited to presentations, interviews, demonstrations, and checking references.

21.5. References

Prior to award, the Committee will contact references of the top scored finalist. If the references for top scored finalist are not satisfactory to the Committee, NYSTRS reserves the right to contact the references of the next-highest scored finalist and, if satisfactory, award the contract to such finalist.

If, in NYSTRS’ opinion, no entity can substantially meet all of the criteria, then NYSTRS reserves the right to withdraw or cancel the RFP and not make an award. However, it is expressly understood that even after selection of a successful bidder, if any, NYSTRS shall have no obligation or liability whatsoever unless NYSTRS enters into a written contract in form and substance satisfactory to NYSTRS. NYSTRS may, for any reason whatsoever, decline to negotiate and/or execute such contract. The resulting contract shall, among other provisions, incorporate this RFP and the successful bidder’s proposal.
PROPOSAL SUBMISSION CHECKLIST

☐ Bidder has reviewed any and all addenda/amendments issued.

☐ Bidder has provided evidence of its ability to meet the minimum qualifications.

☐ Bidder adhered to the stated format for its bid submission, including no references to fees in the technical proposal.

☐ Proposal is organized as follows:
  ☐ Response Template (Exhibit 1)
  ☐ Vendor Responsibility Questionnaire (Exhibit 2)
  ☐ Technology Questionnaire (Exhibit 3)
  ☐ Conflict of Interest Disclosure (Exhibit 4)
  ☐ Proof of Legal Authority to Conduct Business in NYS

☐ Cost Proposal (Exhibit 5) has been signed by an authorized representative, and is attached as a separate file.
STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party other than the New York State Teachers' Retirement System ("NYSTRS"), whether a contractor, licensor, licensee, lessee, lessee or any other party.

1. EXECUTORY CLAUSE. NYSTRS shall have no liability under this contract to the Contractor or to anyone else beyond funds allocated for this contract.

2. NON-ASSIGNMENT CLAUSE. This contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of NYSTRS and any attempts to assign the contract without NYSTRS' written consent are null and void.

3. WORKERS COMPENSATION BENEFITS. The Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

4. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its subcontractors shall discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status or marital status. Further, the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of NYSTRS' contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sexual orientation sex, age, disability, genetic predisposition or carrier status or marital status.

It is the policy of NYSTRS to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises and service-disabled veteran-owned businesses, as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Office of General Services
Division of Service-Disabled Veterans' Business Development
41st Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
844-579-7570
e-mail: VeteransDevelopment@ogs.ny.gov
http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf

A list of certified NYS Service Disabled Veteran-Owned Businesses is available from:

NYSTRS shall have all of its common law, equitable and statutory rights of set-off.

5. NON-COLLUSIVE BIDDING CERTIFICATION. If this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition.

6. INTERNATIONAL BOYCOTT PROHIBITION. The Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder.

7. SET-OFF RIGHTS. NYSTRS shall have all of its common law, equitable and statutory rights of set-off.

8. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. NYSTRS and any other person or entity authorized to conduct an examination, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. Nothing contained herein shall diminish, or in any way adversely affect, the NYSTRS' right to discovery in any pending or future litigation.

9. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

10. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

11. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by the terms of Article XI-A of the State Finance Law.

12. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

13. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon NYSTRS' receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by NYSTRS to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by NYSTRS. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of NYSTRS.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of NYSTRS; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of NYSTRS.

15. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

16. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and improvements thereon shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section.

The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development’s Division of Minority and Women’s Business Development pertaining hereto.

17. DATA PRIVACY AND COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall: (i) at all times process NYSTRS' Personal and Private Information (as defined in the above Breach and Notification Act) in accordance with applicable rules, regulations or laws governing the processing of personal identifiable information; (ii) maintain, and shall require any third party (whom Contractor engages) having access to and processing such Personal and Private Information to maintain, appropriate physical, technical and organizational measures to secure and protect the confidentiality and integrity of NYSTRS' Personal and Private Information against accidental, unauthorized or unlawful destruction, loss, alteration, disclosure or access; and (iii) exercise at least the same degree of care to secure and protect NYSTRS' Personal and Private Information, which it exercises to secure and protect its own similar personal and private information, but in no event less than reasonable care.

18. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the Covered Agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if NYSTRS determines that such action of termination is in its best interest.

19. OFAC COMPLIANCE. The Contractor represents, warrants, and covenants that it shall conduct its business and this engagement and transaction at all times in compliance with applicable law, rules, and regulations and further certifies that Contractor, including but not limited to its partners, officers, directors, and affiliates are not: (i) in violation of, and shall not violate, any relevant anti-money laundering legislation, rule, regulation, or order administered by the Office of Foreign Assets Control of the US Department of the Treasury ("OFAC"), including Subtitle B, Chapter V of Title 31 of the U.S. Code of Federal Regulations each as amended from time to time; (ii) Persons appearing on the Specially Designated Nationals and Blocked Persons List of the OFAC or Persons with whom a transaction is prohibited by Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act, or the foreign asset control regulations of the United States Treasury Department, each as amended from time to time; or (iii) Persons having its principal place of business located in a country to which the foregoing item (ii) applies.
1) New York State Teachers' Retirement System (NYSTRS) will not be liable for any cost incurred by the bidder in association with the preparation of this bid/proposal including costs associated with vendor demonstrations.

2) All bids/proposals and accompanying documentation become the property of NYSTRS and will not be returned.

3) Confidential/Trade Secret Materials
   
   A. Bidder. Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon bid/proposal by the bidder. Marking the bid/proposal as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by NYSTRS to be sufficient without specific justification as to why disclosure of particular information in the bid/proposal would cause substantial injury to the competitive position of the bidder. Bidders intending to seek an exemption from disclosure of these materials under the Freedom of Information Law (Article 6 of the New York State Public Officers Law) must request the exemption in writing, setting forth the reasons for the claimed exemption (using Exhibit 1, Response Template, “FOIL” section). NYSTRS’ receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with NYSTRS’ procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

   B. NYSTRS. Bidder warrants, covenants and represents that any confidential information obtained by bidder, its agents, subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of NYSTRS hereunder or received from another third party, will not be divulged to any third parties without the written consent of NYSTRS. Bidder shall not be required to keep confidential any such material that is publicly available through no fault of bidder, independently developed by bidder without reliance on confidential information of NYSTRS, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Bidder further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

4) False or Misleading Statements. Any proposal which contains false or misleading statements, or which provides references which do not support an attribute, condition, or capability claimed in the proposal, will not be considered by NYSTRS if, in the opinion of NYSTRS, such false or misleading statement was intended to mislead NYSTRS in its consideration of the proposal. NYSTRS, in its sole discretion, may disqualify the Bidder under such circumstances.

5) All information in this bid/proposal including evaluation results, specifications, and other specific claims may be included as part of the final contract.

6) All contracts with NYSTRS require compliance with the laws of New York State. Accordingly, a document entitled "Standard Clauses for New York State Contracts" (Appendix A) will become part of any resulting contract.

7) The bidder’s legal entity must have legal authority to conduct business in New York State and must be appropriately registered with the New York State Department of State or other applicable regulatory body or must provide a Certificate of Good Standing from the applicable jurisdiction in which such legal entity was formed or incorporated.

8) Late bids/proposals will not be accepted unless (i) less than three timely bids meeting the requirements of the bid documents are received or, (ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy multiple awards; and acceptance of the late bid is in the best interests of NYSTRS.

9) Bids/proposals must be signed by an authorized representative of the submitting firm.

10) The bidder shall assume full responsibility for providing the goods and services detailed in their proposal. The bidder shall be held solely responsible and liable for contract performance of and by its employees, subcontractors and agents. The bidder shall be responsible for payment of all employees, sub-contractors, agents, and suppliers including all third-party equipment, license fees and service providers contracted by or through the bidder in performance of the agreement.

11) The bidder may not sub-contract on any portion of the delivery of goods or services hereunder without the express written consent of NYSTRS.

12) Remanufactured, Recycled, Recyclable or Recovered Materials. Upon the conditions specified in the bid specifications and in accordance with the laws of the State of New York, contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of products and packaging to the maximum extent practicable without increasing NYSTRS’ cost and without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health, welfare, safety requirements or in the bid specifications. Contractors are further encouraged to offer...
remanufactured products to the maximum extent practicable without increasing NYSTRS’ cost and without jeopardizing the performance or intended end use of the product and unless such use is precluded due to health, welfare, safety requirements or by the bid specifications. Where such use is not practical, suitable, or permitted by the bid specifications, contractor shall deliver new materials.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the bid or bidder will be deemed to be offering new product.

13) NYSTRS reserves the right to:

a. Make an award under this solicitation in whole or in part.
b. Withdraw or cancel the solicitation, at its sole discretion.
c. Change the scheduled dates/times stated in the solicitation documents.
d. Consider every bid as firm and irrevocable for a period of one hundred eighty (180) days from the bid opening or such other period of time specified in the solicitation. Subsequent to such period, a bid may be withdrawn in writing.
e. NYSTRS reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if NYSTRS determines its best interests will be served. NYSTRS, in its sole discretion, may accept or reject illegible, incomplete or vague bids and its decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered, and contract award may be made in compliance with the bidder’s conditional or revocable terms in the offer.
f. Waive or modify minor irregularities (including minor typographical and computational errors) in bids/proposals; and to make minor modifications, including but not limited to adjusting bidder’s mathematical errors, after prior notification and concurrence of the bidder.
g. Adapt all or part of a vendor’s proposal in selecting the optimum level of service unless those ideas are covered by legal patent or copyright.
h. Negotiate with bidders to serve the best interests of NYSTRS, including negotiating separately with any source whatsoever in any manner necessary to best serve the interests of NYSTRS.
i. Reject any or all bids/proposals at any time and for any reason, including proposals which do not conform to the requirements of the solicitation; and, at NYSTRS’ sole discretion, to solicit new bids on the same or different terms.
j. Conduct contract negotiations with the next eligible responsible bidder should NYSTRS be unsuccessful in negotiating an agreement with the selected bidder within a timeframe acceptable to NYSTRS; such timeframe is to be determined solely by NYSTRS based on its best interests.
k. Prior to bid opening, modify or amend the specifications. Any amendment(s) to bid specifications will be posted on NYSTRS’ website.
l. Subsequent to the bid opening, modify or amend the specifications.
m. Seek clarification and/or additional information, at NYSTRS’ sole discretion, for the purpose of fully understanding the bidder’s proposal, and seek revision from all bidders capable of receiving award.
n. Eliminate mandatory requirements unmet by every bidder.
o. Waive any requirement(s) that is (are) not material.
p. Reject/disqualify a bid if, in NYSTRS’ sole discretion, the bid price is determined to be insufficient or excessive.
q. Request a “best and final” offer from bidder(s) and/or finalist(s).
r. Reject an obviously unbalanced bid or to make "NO AWARD" on individual listings or sub-items if individual bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced bid shall be at the sole discretion of NYSTRS. Options contained in this paragraph shall also be at NYSTRS’s sole discretion.
s. To withdraw an award if the awardee seeks to later modify any terms of its offer or any other terms, including, but not limited to, exception(s) to the terms of the solicitation, NYSTRS contract, Appendix A, or any other terms.
t. Use the proposal, information obtained through site visits, management interviews, investigation of bidder qualifications, experience, ability, financial standing and any other information that is generally available in the public domain to evaluate the bidders’ response to the solicitation and their ability to provide the goods and/or services requested.
u. To impose penalties for other than completely satisfactory performance, in accordance with State rules, regulations, guidelines, past practices or NYSTRS policy. Penalties, where applicable, may be stipulated in the resulting contract.
v. Establish an extended acceptance testing period where applicable and, if not satisfied with the performance during the testing period, award the contract to the next eligible bidder.
w. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the solicitation documents.
x. Require the bidder to demonstrate to the satisfaction of NYSTRS any feature(s) presented as a part of its bid.
y. Terminate the contract(s) if NYSTRS deems the price adjustment pursuant to the solicitation or contract is not in the best interests of NYSTRS.
z. If requested by bidder, and if in NYSTRS’ best interest to do so, implement changes in price based on unforeseen factors such as dramatic changes in availability, delivery, costs, etc., for product, supplies, etc., that substantively affect the contractor’s business processes or that may impact contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources.

aa. After an unsuccessful attempt to speak with the contact person noted on the reference form, survey another person knowledgeable and familiar with the bidder from the submitted reference due to time constraints.

bb. Review and consider other known clients of the bidder in addition to those provided, including NYSTRS, and to disqualify based on unsatisfactory reports and/or records of services provided.

c. Reject all bids which do not comply with the bid specifications. However, NYSTRS may elect to award to the bidder who receives the highest overall combined evaluation score even if such bidder does not comply with all of the bid specifications, providing that the bidder’s non-compliance is deemed by NYSTRS to be non-material to overall performance of the services.

dd. Invalidate a bidder’s scores at any time during the evaluation process if the bidder’s bid is deemed non-responsive or is otherwise disqualified.

e. Disqualify a bidder from receiving the award if the bidder, or anyone in the bidder’s employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

ff. Accept or reject any of the bidder’s employees assigned to this contract and to require their replacement at any time.

14) Each person or entity submitting a proposal to NYSTRS must disclose in writing as part of its proposal if, to the proposer’s knowledge, a NYSTRS decision maker has an interest in such proposal. The proposer must also identify the nature of such interest. For the purposes of this requirement, a NYSTRS decision maker includes each member of NYSTRS’ Retirement Board, Investment Advisory Committee and Real Estate Advisory Committee and each NYSTRS employee required to take any discretionary action in connection with the proposal. A NYSTRS decision maker may have an interest in the proposal, for example, where s/he or her/his spouse is a family member of the proposer; has entered or intends to enter into a business or financial relationship with the proposer; has recently received substantial pecuniary or material benefits from the proposer; or will receive a pecuniary or other benefit if NYSTRS acts favorably on the proposal. For these purposes, a family member is a spouse, child, step-child, parent or dependent.

15) Bidders and their employees must comply at all times with the requirements of NYSTRS’ Code of Ethics, NYSTRS’ Policy Governing the Receipt of Gifts, and other applicable codes, rules and regulations establishing ethical standards for the conduct of business with NYSTRS. Copies of these policies may be downloaded from NYSTRS’ procurement website (https://www.nystrs.org/About-Us/Procurement-Information). Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

16) By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of §201-G of New York Labor Law.

17) All outstanding tax liabilities, if any, against the bidder in favor of the State of New York must be satisfied or a payment schedule arranged for the speedy satisfaction of any such outstanding tax liabilities prior to contract execution.

18) EQUIVALENT OR IDENTICAL BIDS. In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. In the event two more bidders submit identical pricing, the following will be used, in order of precedence, to break the tie:

   a. NYS Certified M/WBE or SDVOB;
   b. Drawing names.

   In the event there are two or more MWBEs/SDVOBEs, then the tie shall be broken by drawing names. When drawing names, there must be two witnesses to oversee actual occurrence and bid tabulation.

19) PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS. NYSTRS reserves the right to investigate or inspect at any time whether or not the product, services, qualifications or facilities offered by the bidder/contractor meet the requirements set forth in the bid specifications/contract or as set forth during contract negotiations. Contractor shall at all times during the contract term remain responsible and responsive.

   A bidder/contractor must be prepared to present evidence of legal authority to do business in New York State, integrity,
experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the product offered/bid.

If NYSTRS determines that the conditions and terms of the bid documents, bid specifications or contract are not complied with, or that items, services or product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, NYSTRS may reject such bid or terminate the contract.

After contract commencement, NYSTRS may use information obtained through site visits, management interviews, and any other information that is generally available in the public domain to (re)evaluate the contractor’s ability to provide the goods and services requested as well as the contractor’s current financial standing.

20) **DISQUALIFICATION FOR PAST PERFORMANCE AND FINDINGS OF NON-RESPONSIBILITY.** Bidder may be disqualified from receiving awards if bidder, or anyone in bidder’s employment, has previously failed to perform satisfactorily in connection with public bidding or contracts or is deemed non-responsible.

21) **DEBRIEFING.** Any unsuccessful bidder may request a debriefing by notifying NYSTRS in writing within ten (10) business days of notification by NYSTRS that the bidder’s proposal was not selected for award. All requests for debriefings shall be emailed to the designated contact person specified in the applicable bid documents. The debriefing shall be addressed following the execution of the resulting contract, within a reasonable time period after such execution, considering all relevant circumstances.

A debriefing will be limited to a review of an unsuccessful Bidder’s own submission and the scoring of that submission and may be conducted via email and/or phone call.

NYSTRS will not provide debriefings for a canceled (or otherwise not awarded) solicitation.

22) The contract may be canceled by NYSTRS at the contractor’s expense if the contractor becomes unable or incapable of performing the work or fails to meet any requirements or qualifications set forth in the contract, or for non-performance, or upon a determination that Contractor is non-responsible. Contractor shall have thirty (30) days from the date of notice from NYSTRS to cure a breach, if the breach can be remedied. In such event, NYSTRS may complete the work in any manner it may deem advisable and pursue available legal or equitable remedies for breach. If the contract is terminated for cause, and if any secondary contract award results in an increased cost to NYSTRS, the previous contractor will be held liable for the increased cost. NYSTRS reserves the right to cancel the contract without cause upon thirty (30) days written notice.

23) The contractor and NYSTRS shall first attempt to resolve any disputes through one or more conferences between designated representatives of the parties. If NYSTRS and the contractor are unable to resolve the dispute in this manner, then NYSTRS and the contractor may pursue any legal or equitable remedy they may have. However, if the contractor does so, it will continue to perform the disputed work in accordance with the direction of NYSTRS pending the outcome of such proceedings.

In the event of a dispute regarding an invoice(s), contractor and NYSTRS shall try to reach an amicable resolution; however, NYSTRS shall have final determination on such matters.

24) Provisions will be included in the contract to address changes to the project recommended by either party, if appropriate.

25) NYSTRS reserves the right to withhold payment for the contractor’s failure to perform services under the Agreement. Additionally, NYSTRS reserves the right to automatically withhold payment from, and/or cease transacting with, the contractor at any time if (a) such engagement violates any applicable law, rule or regulation; or (b)(i) the contractor’s name appears on the United States Treasury Department’s Office of Foreign Assets Control (“OFAC”) most current list of “Specially Designated National and Blocked Persons,” in each case as amended from time to time and as published and updated in various mediums including on the OFAC website; or (ii) the contractor is an automatic blocked person in accordance with OFAC’s 50% rule as the result of one or more direct or indirect owners of the contractor being on the SDN list.

26) The contractor shall be responsible for and shall assist NYSTRS in the orderly transition of services should a new contractor be selected at the conclusion of the contract term. The contractor shall accommodate all reasonable requests made by NYSTRS to effect such orderly transition.

27) Employers are required by Federal law to verify that all employees are legally entitled to work in the United States. Accordingly, NYSTRS reserves the right to request legally mandated employer held documentation attesting to the same for each employee/consultant assigned work under any contract awarded as a result of this solicitation or other procurement method. In accord with such laws, NYSTRS does not discriminate against individuals on the basis of national origin or citizenship.
28) Bidder represents and warrants that if awarded a contract it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the resulting contract, at the contractor’s expense. Prior to award and during the contract term and any renewals thereof, contractor must establish to the satisfaction of NYSTRS that it meets or exceeds all requirements of the bid and contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof upon NYSTRS’ request. Failure to comply or failure to provide proof may constitute grounds for NYSTRS to cancel or suspend the contract, in whole or in part; or to take any other action deemed necessary by NYSTRS.

29) Any “right” of NYSTRS in this Appendix B indicates a permissive exercise of such right by NYSTRS in its sole and absolute discretion, and does not imply or create any duty or obligation to exercise such right. The term “discretion,” as used in this Appendix B, means the sole and absolute discretion of NYSTRS, absent an express limitation on such discretion.

30) The bid/proposal process does not constitute or create a commitment on the part of NYSTRS to purchase any goods or services from the bidder. No contract or agreement pertaining to the potential transaction between NYSTRS and bidder will be deemed to exist until a definitive, legally-binding written agreement has been executed and delivered by NYSTRS and bidder. NYSTRS is not obligated to conduct any discussions with bidder concerning its bid/proposal, and NYSTRS may terminate discussions with bidder at any time.
This Agreement (this “Agreement”) is entered into by and between the NEW YORK STATE TEACHERS’ RETIREMENT SYSTEM ("NYSTRS" or the "System"), a public pension fund existing pursuant to Article 11 of the NYS Education Law and having the powers and privileges of a corporation as per §502 thereof, which has its headquarters located at 10 Corporate Woods Drive, Albany, NY 12211, and __________________________ ("Contractor"), a corporation organized under the laws of __________________________, which has an office located at __________________________.

WHEREAS, NYSTRS has formally requested qualified and experienced firms to submit proposals for the following described services (the “Services”):

Conduct independent annual audits of the financial statements of the System, perform annual independent actuarial reviews, and annual audits of the System’s Schedules of Employer Allocations and Pension Amounts by Employer, beginning with the fiscal year ending June 30, 2021, as set forth in the specification of Request for Proposal (RFP) 21-02, as amended (hereinafter referred to as the “Request for Proposal” or the “RFP,” attached hereto as Attachment 1 and incorporated herein by reference); and

WHEREAS, Contractor submitted a sealed proposal dated __________, as supplemented, to NYSTRS to provide the Services, as specified in more detail in its proposed solution contained in such proposal (collectively, “Contractor’s Proposal,” attached hereto as Attachment 2 and incorporated herein by reference); and

WHEREAS, NYSTRS has determined through a competitive process that Contractor is the successful bidder, and Contractor is willing to undertake the professional services and to provide the necessary materials and labor in connection therewith.

NOW, THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations of each party hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Statutory Requirements of Public Contracts**

Contractor agrees to be bound by all statutory requirements of public contracts under New York state law, which said requirements are hereby incorporated by reference as if fully set forth herein. Without limiting the generality of the foregoing, some of said statutory requirements are set forth in "Standard Clauses for NYS Contracts," which is attached hereto as Appendix A and made a part hereof.

2. **Governing Law**

This Agreement will be governed by and construed and enforced in accordance with the laws of the State of New York, without regard or giving effect to the conflict of laws principles thereof. All actions, suits, proceedings or claims (collectively, “Proceedings”) in connection with this Agreement shall be subject to the exclusive jurisdiction of competent courts within the State of New York and each party hereby irrevocably (a) consents and submits to the jurisdiction and venue of those courts; and (b) waives (i) any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, (ii) any claim that such Proceedings have been brought in an inconvenient forum; and (iii) the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

3. **Sovereign Immunity**

Contractor agrees that NYSTRS is an instrumentality of the State of New York and NYSTRS reserves all defenses, rights or actions arising out of its sovereign status, including those under the Eleventh Amendment to the United States Constitution, and no waiver of such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of NYSTRS’ execution of this Agreement.

4. **Merger of Documents/Conflict of Clauses/Entire Agreement**

This Agreement shall be deemed inclusive of the following documents which are incorporated as if set forth herein at length. Conflicts between these documents shall be resolved in the following descending order of precedence:

A. Appendix A (July 2015);
B. This Agreement (without reference to the other items in this list);
C. Attachment 3 (insurance requirements);
D. Attachment 4 (fees)
E. Attachment 1 (RFP 21-02);
F. Attachment 2 (Contractor’s proposal), excluding any sample agreement(s) or other legal terms and conditions which shall not be binding upon the parties hereto.

This Agreement, including all attachments and appendices hereto, constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

This Agreement shall supersede, now and in the future and without limitation, any terms or conditions on Contractor's website; terms and conditions referenced on a quote or invoice; or any other terms and conditions not expressly agreed to by the parties in writing. For clarity, no “click-through” “click and accept,” “web-wrap,” or other similar agreements or terms, whether before, on, or after the date of this Agreement, will be effective to add to or modify the terms of this Agreement, regardless of any party’s acceptance of those terms by electronic means.

5. Effective Date; Counterparts

The Agreement shall not be effective until signed and delivered by both Contractor and NYSTRS.

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, or by email transmission of scanned signature pages in Portable Document Format (PDF)), each of which will be deemed an original, but all of which when taken together will constitute one and the same instrument.

6. Binding Effect, Assignment

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns, but neither party may assign its interests or obligations in this Agreement, or any part thereof without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any such assignment shall only be effective if such successor shall expressly assume the respective party’s obligations under this Agreement and shall agree to be subject to all of the terms and conditions of this Agreement. Any assignment in contravention of this Section will be void.

7. Employees, Subcontractors and Agents

All employees, subcontractors or agents performing work under this Agreement must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the RFP, and must comply with all security and administrative requirements of NYSTRS. NYSTRS reserves the right to conduct a security background check or otherwise approve any of Contractor’s employees, subcontractors or agents assigned to this contract, and to refuse access to or require replacement of any employees, subcontractors or agents of the Contractor for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with NYSTRS' security or other requirements. Contractor shall diligently supervise its subcontractors and agents at all times, and shall be liable for all acts and omissions of such subcontractors and agents. The use by Contractor of any subcontractors or agents, and the approval thereof by NYSTRS, shall not relieve the Contractor of the obligation to perform all work in compliance with the terms of this Agreement, and shall not relieve the Contractor or any of its liabilities or other obligations under this Agreement.

8. Contractor Personnel

Contractor shall assign experienced personnel to supervise the performance of its duties pursuant to this Agreement, and shall make those persons and other knowledgeable resources available as required by NYSTRS at all reasonable times for the provision of services by Contractor hereunder.

For purposes of this Agreement, ________________________ are considered key personnel (“Key Personnel”). Contractor acknowledges and agrees that it is the understanding and intent of both parties that Key Personnel so assigned herein
shall be committed for the entire term and duration of this Agreement, including any renewals thereof, and continue in Contractor’s employ through the completion of all services performed pursuant to this Agreement. Accordingly, Contractor shall use best efforts in retaining Key Personnel during the entire term and duration of the Agreement. Unless otherwise agreed to in writing by both parties, such Key Personnel will be assigned to the NYSTRS relationship and will not thereafter be taken off by Contractor for any reason, except in the event of such Key Personnel’s death, injury, disability, resignation or discharge for cause. In the event that any of the Key Personnel assigned hereunder are is (i) not available, not able or not willing to perform the services under the Agreement, (ii) commits any act or omission that constitutes fraud, or is indicted for or convicted of any criminal offense, or (iii) are otherwise no longer in the employ of Contractor, at any time during the term(s) of this Agreement, then NYSTRS, in its sole discretion, shall have the option to request a replacement of comparable background and experience as a substitute for such Key Personnel, subject to approval of NYSTRS, or and shall have the right to immediately terminate the Agreement upon prompt written notice in the event a substitute for such Key Personnel is not promptly (and in any event within 15 days) retained and/or does not meet with NYSTRS’ approval.

NYSTRS reserves the right to conduct a background investigation on any contractor personnel that will have access to NYSTRS Confidential Information. If any Contractor employees or subcontractors will be working at NYSTRS’ facilities, NYSTRS will issue a badge for physical security to the appropriate work areas. NYSTRS will identify the data access requirements for access to system data and coordinate with appropriate channels to ensure the proper access is assigned and periodically reviewed for update as necessary. Access rights will be monitored, and concerns of improper data access will be brought to the attention of NYSTRS’ General Counsel.

9. Employment Eligibility/Immigration Reform and Control Act (IRCA) of 1986

Employers are required by Federal law to verify that all employees are legally entitled to work in the United States. In accord with such laws, NYSTRS does not discriminate against individuals on the basis of national origin or citizenship. Contractor attests and covenants that Contractor and its agents, representatives and subcontractors comply and will comply with all applicable local, state and federal laws respecting, employment eligibility, employment verification and non-discrimination and agrees to provide documentation regarding the same to the appropriate authorities as, when or if required.

10. Term and Termination

A. Term. This Agreement shall be effective for a period of five (5) years, beginning with the audit of the fiscal year ending June 30, 2021.

B. Termination for Convenience. NYSTRS reserves the right to terminate this Agreement at any time after the commencement date without cause upon thirty (30) days’ prior written notice, without penalty or other early termination charges due. Additionally, NYSTRS shall be entitled to a pro-rated refund of any prepaid charges, including license and subscription fees.

If Contractor terminates the Agreement without cause, then (i) Contractor shall refund to NYSTRS all progress payments made relating to such engagement; (ii) Contractor shall reimburse NYSTRS for its costs to re-procure the services; (iii) Contractor shall further indemnify NYSTRS for any other damages, losses, claims, costs or expenses incurred by NYSTRS arising from or related to such termination by the Contractor; and (iv) in addition to clauses (i) through (iii) above, NYSTRS shall be entitled to pursue any and all other rights, remedies and recourses available to NYSTRS under this Agreement, at law or in equity, including without limitation seeking injunctive relief for specific performance.

C. Termination for Cause. NYSTRS reserves the right at any time to terminate this Agreement immediately upon written notice if (a) any Event of Insolvency (defined below) occurs with respect to Contractor; or (b) the Contractor willfully or intentionally violates or breaches any material provision of this Agreement.

If either party: (i) commences or becomes the subject of any case or proceeding under the bankruptcy, insolvency or equivalent laws of any country; (ii) has appointed for it or for any substantial part of its property a court-appointed receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official; (iii) makes an assignment for the benefit of its creditors; (iv) defaults on any secured obligation; (v) fails generally to pay its debts as they become due; or (vi) takes corporate action in furtherance of any of the foregoing clauses (i) through (v) (collectively, herein
referred to as "Events of Insolvency"), then, in each case, the party experiencing such an Event of Insolvency shall immediately give notice of such event to the other party. Whether or not such notice is given, the other party shall have the right, to the fullest extent permitted under applicable law, following the occurrence of any Event of Insolvency and without prejudice to any other rights it may have, at any time thereafter to terminate this Agreement, effective immediately upon giving notice to the party experiencing such an Event of Insolvency.

D. **Effect of Termination.** In the event of termination, Contractor shall be entitled to be reimbursed only for fees and expenses associated with actual work performed prior to the effective date of termination, including any prepaid license and subscription fees, but in no event shall any such payment, or combination thereof, exceed the bid fee established pursuant to this RFP or the total maximum fee otherwise payable under the contract.

Contractor shall be required to substantiate the claim for payment by providing copies of payrolls and other information that NYSTRS shall reasonably require. Any records available to NYSTRS under this Section may be redacted by Contractor to the extent necessary to protect its proprietary and confidential information and to avoid any invasion of personal privacy. To the extent that such redacted record(s) is (are) inconclusive or does (do) not adequately substantiate a claim for payment hereunder, NYSTRS reserves the right in its sole discretion to request additional information or deny payment.

Following the expiration of the term of this Agreement or delivery of any notice of termination hereunder, Contractor shall perform all of its obligations hereunder in good faith as directed by NYSTRS and will cooperate fully with NYSTRS in taking all necessary and appropriate steps in order to effectuate the orderly transfer of files or other information to third parties designated by NYSTRS.

E. **Survival.** Notwithstanding the expiration or termination of this Agreement or any extension thereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive including but not limited to terms and conditions concerning payments, warranties, limitations of liability, confidentiality, and indemnities.

11. **Performance and Payment**

Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection herewith, in accordance with all of the conditions, covenants and representations set forth in this Agreement, including all attachments hereto.

Subject to the terms and conditions of the Agreement, NYSTRS agrees to pay Contractor, in accordance with Attachment 4 hereof, to provide the goods services.

Contractor shall not be entitled to any reimbursement of expenses or other additional compensation, unless specifically authorized in accordance with Section 14, *Additional Services*, hereof.

12. **Timeliness of Payment; Taxes**

Article XI-A of the State Finance Law and Section 1096 (e) of the State Tax Law shall govern timeliness of payment and any interest thereon (if applicable) to be paid to Contractor for late payment. Relative to taxes ordinarily due thereupon, NYSTRS represents that it is an instrumentality of the State of New York, and as such, is exempt from payment of New York state and local sales and use taxes.

13. **Invoicing**

In order to receive payment for the fees payable pursuant to this Agreement, Contractor shall provide complete and accurate invoices for the services rendered. Invoices submitted must contain all information required by the Agreement. NYSTRS agrees to pay undisputed invoiced amounts within 30 days from the date a proper invoice is received by NYSTRS (excluding legal and NYSTRS’ holidays). Invoices shall be sent electronically to: AP@nystrs.org.

NYSTRS shall review and approve any invoice prior to payment thereof. Contractor agrees to provide NYSTRS with such detailed documentation substantiating fees and disbursements as NYSTRS may reasonably request. In the event of a dispute regarding an invoice(s), Contractor and NYSTRS shall try to reach an amicable resolution; however, NYSTRS shall have final determination on such matters.
Neither acceptance of work nor making any payment shall release Contractor from Contractor’s obligations under this Agreement. The acceptance by Contractor of final payment shall operate as and shall be a release to NYSTRS from all claims of and liability to Contractor under this Agreement.

14. Additional Services

No additional services shall be authorized except by written amendment which shall specify the details of such work and the fixed or estimated compensation for such extra work. Contractor is not obligated to comply with any requested changes hereunder without a duly executed amendment to this Agreement. If Contractor performs any work that is not established under this Agreement or an amendment thereto, Contractor shall be solely liable for said work and no payment shall be due and owing from NYSTRS (and NYSTRS shall have the right to retain such work), unless and until a duly executed and approved amendment is executed and ratified for such work.

15. Confidentiality

A. Defined. “Confidential Information,” as used in this Agreement, means all information proprietary to a party or any of its customers or suppliers (whether or not marked as confidential, and whether such disclosure is made orally or in writing). Confidential Information of NYSTRS shall be deemed to include, without limitation, all data to which Contractor obtains access by performing the services (including, but not limited to, data belonging to NYSTRS’ past, present, future, or prospective business partners) and any deliverable containing such data and any findings or recommendations by Contractor and any information regarding NYSTRS’ information systems, architecture or topology, security practices (including without limitation software), NYSTRS’ Personal and Private Information (“PPI”) (as defined in the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208)) and NYSTRS’ Protected Health Information (“PHI”) (as defined by the Health Insurance Portability and Accountability Act), NYSTRS’ members or NYSTRS’ business partners. Confidential Information of Contractor shall be deemed to include, without limitation, its methodologies, templates, report, policy and plan formats, deliverables (except NYSTRS data), scripts and tools.

For purposes of this Section 15, either party disclosing any of its Confidential Information to the other is hereinafter referred to as the “Disclosing Party,” and the other party receiving such Confidential Information is hereinafter referred to as the “Receiving Party.”

For purposes of this Agreement, Confidential Information shall not include information that: (a) is or becomes public domain, or is or becomes publicly known or publicly available, through no act or omission on the part of the Receiving Party; (b) is provided to the Receiving Party by any third party without restriction on disclosure and without breach by such third party of any nondisclosure obligation; (c) is substantiated with written records as previously known to the Receiving Party without accompanying obligation to keep it confidential; (d) is expressly released in writing by the Disclosing Party from the obligations of confidentiality imposed by this Agreement; (e) is independently developed by the Receiving Party without the use of, reference to, or derivation from the Disclosing Party’s Confidential Information. Any party asserting that information is not Confidential Information by virtue of any of clauses (a) through (e) of this Section shall have the burden of proof on such issue.

B. Obligations. The Receiving Party agrees not to disclose or use any Confidential Information of the Disclosing Party in violation of this Agreement and to use Confidential Information of the Disclosing Party solely for the purposes of this Agreement. Contractor acknowledges that all files and other information necessary to provide the services described in this Agreement shall be maintained in a secure and limited access area, under the strictest confidence. Each party shall exercise at least the same degree of care to protect the confidentiality of the other party’s Confidential Information, which it exercises to protect the confidentiality of its own similar confidential information, but in no event less than reasonable care. Each Party shall be responsible for any unauthorized disclosure of Confidential Information by its Board members, officers, employees, agents, representatives or subcontractors in violation of the terms of this confidentiality provision.

The Receiving Party shall securely return to the Disclosing Party all copies of the Disclosing Party’s Confidential Information in the Receiving Party’s possession or control and destroy all derivatives and other vestiges of the Disclosing Party’s Confidential Information when it is no longer required to be retained for the performance of its obligations under this Agreement, or upon termination of this Agreement; provided that (i) the Receiving Party may
retain one archival copy solely for the purpose of administering its obligations as required by applicable law, rule or regulation or by such party’s written document retention policies; (ii) the Receiving Party may retain Confidential Information delivered or stored in electronic form to the extent deletion, destruction or expunction thereof would be technologically impracticable, unfeasible or cost-prohibitive; provided, further, that the confidentiality provisions of this Agreement shall continue to apply to any such Confidential Information retained pursuant to clauses (i) or (ii) above; provided that the Receiving Party shall ultimately return or destroy said Confidential Information when it is no longer required to be retained. Further, the foregoing provisions of this paragraph do not apply to materials or work product (including without limitation internal analyses, memoranda, reports and summaries) prepared by NYSTRS or its agents, whether or not such materials or work product contains Confidential Information.

At the conclusion of the Services (or to the extent no longer required to be retained for the performance of its obligations under this Agreement) or required archival period of the Receiving Party, or upon termination of this Agreement the Receiving Party shall provide the Disclosing Party with a written attestation/certification that all Confidential Information and any copies, derivatives and other vestiges of the Disclosing Party’s Confidential Information, regardless of format, has been as appropriate either securely returned or deleted, un-installed, removed, erased, or otherwise destroyed in a manner that would reasonably prevent un-deletion or restoration.

C. Need to Know. The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, officers, directors (and, in the case of NYSTRS, its Board of Trustees), auditors, representatives, attorneys and third party contractors who have a reasonable need to know such Confidential Information for purposes of this Agreement, provided, however, that prior to any disclosure by Contractor, Contractor’s employees, officers, directors, auditors, representatives, attorneys and third party contractors shall enter into a written confidentiality agreement on terms at least as strict as the confidentiality obligations contained in this Agreement. Disclosure of Confidential Information pursuant to any applicable law (including, but not limited to, New York’s Freedom of Information Law (NY Public Officer. Law §84 et seq., as amended) and New York’s Open Meetings Law (NY Public Officer Law §100 et seq., as amended)), rule or regulation, or pursuant to any judicial or administrative order or decree, or pursuant to any request by other regulatory organization having authority pursuant to the law, shall not constitute a violation of the other provisions of this Section; provided that the Disclosing Party has been given reasonable prior notice of such proposed disclosure by the Receiving Party; provided, further, that such prior notice shall not be required if such prior notice is prohibited by applicable law, rule, regulation, order, decree or request or is not reasonably practicable. The Receiving Party shall further reasonably cooperate, at no cost to the Receiving Party, in any efforts of the Disclosing Party to seek a protective order or other appropriate remedy from the proper authority.

D. Systems. If a party is given access, whether on-site or through remote facilities, to any computer or electronic data storage system of the other, such access and use shall be limited solely to performance within the scope of this Agreement and the party provided access shall not knowingly access or attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to fulfill its obligations under this Agreement. All user identification numbers and passwords shall be deemed to be Confidential Information.

E. Ownership. All Confidential Information of the Disclosing Party shall remain the exclusive property of the Disclosing Party or its third-party licensors.

F. Injunction. Both parties agree that violation of any provision of this Section 11 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that the Disclosing Party will be entitled to immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it. Notwithstanding the foregoing or anything to the contrary in this Agreement, in no event shall Receiving Party be liable to Disclosing Party or any other person or entity for any incidental, indirect, special, consequential or punitive damages of any kind arising from or relating to any such violation, even if the possibility of such damages is, or should have been, known.

16. Insurance

For the duration of this Agreement, Contractor shall maintain insurance in accordance with Attachment 3, as well as any other insurance required by law of an employer. Contractor shall provide NYSTRS with certificates of insurance showing the respective coverages prior to the commencement of any work hereunder. Such certificates of insurance shall name the New York State Teachers’ Retirement System as an Additional Insured.
By requiring insurance, NYSTRS does not represent that certain coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed a limitation on Contractor’s liability under the indemnities granted to NYSTRS under this Agreement.

17. Indemnification

To the fullest extent permitted by law, Contractor in performance of its duties pursuant to this Agreement shall fully indemnify, defend, and hold NYSTRS and its board members, officers, employees and agents or servants (collectively, “NYSTRS Indemnitees”) harmless from and against any and all claims, suits, actions, damages, losses and expenses and costs of every name and description, including but not limited to attorneys’ fees, imposed against NYSTRS or any NYSTRS Indemnitee for any actual or alleged personal injury or death, damage to or destruction of real or personal tangible or intangible property, any claim or assertion by any third party against NYSTRS or NYSTRS Indemnitees of infringement or misappropriation of any patent, copyright, trademark, trade secret, or other proprietary or intellectual property right of such third party, any negligence, fraud, misconduct, unauthorized use, disclosure, access, or acquisition (whether on its own or through a third-party) of NYSTRS Confidential Information, Contractor’s breach (whether on its own or through a third-party) of its obligations under the Agreement, or any other claim for damages arising out of any act or omission on the part of Contractor, its employees, agents or subcontractors or any work or services performed on behalf of NYSTRS by Contractor, or any use by NYSTRS of any of the services provided by or through Contractor. Contractor acknowledges and agrees that Contractor will inform all of its principals, officers, employees, agents and subcontractors engaged to perform services for NYSTRS under the Agreement of the obligations contained herein. To the extent necessary and/or required by law, Contractor shall provide training to such employees, agents and subcontractors to promote compliance with this Agreement. Contractor agrees to assume all liability for breach of this Agreement by any of its principals, officers, employees, agents and subcontractors. Contractor’s liability for this Section shall not be limited to the insurance coverage herein prescribed.

18. Remedies for Breach

In the event that Contractor fails to observe or perform any term or condition of the Agreement and such failure remains uncured after 15 calendar days following written notice, NYSTRS may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of NYSTRS, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to NYSTRS in the event of breach shall include but not be limited to the following:

A. **Cover/Substitute Performance.** In the event of Contractor’s material, uncured breach, NYSTRS may, with or without issuing a formal solicitation: (i) purchase from other sources; or (ii) if NYSTRS is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement services of equal or comparable quality, NYSTRS may acquire acceptable replacement services of lesser or greater quality.

B. **Withhold Payment.** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of NYSTRS.

C. **Reimbursement of Costs Incurred.** In the event of Contractor’s material, uncured breach, Contractor agrees to reimburse NYSTRS promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement services. Should the cost of cover be less than the Contract price, Contractor shall have no claim to the difference. Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney’s fees, shall be paid by the Contractor.

NYSTRS’ selection of one or more remedies for breach of this Agreement shall not limit NYSTRS’ right to invoke any other remedy available to NYSTRS under this Agreement or by law.

19. Limitation of Liability

A. Contractor’s liability under the indemnities granted to NYSTRS under this Agreement shall be without limitation.
B. NYSTRS may retain such monies from any amount due to Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against NYSTRS.

C. Neither the Contractor nor NYSTRS shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use, loss of profit, lost business opportunities, unabsorbed overhead or any indirect consequential damages by NYSTRS, Contractor, or by others.

20. **Representations, Warranties and Covenants of Contractor**

A. **Authority.** Contractor represents and warrants, as of the date of the execution and delivery of this Agreement, and at all times thereafter until the termination of this Agreement, that (i) it has full power and authority to enter into this Agreement; (ii) this Agreement has been duly authorized and, when executed and delivered, will be binding upon Contractor; (iii) the Contractor is duly organized or formed and is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification; and (iv) any and all governmental and other consents, licenses and approvals that are required to have been obtained by it with respect to this Agreement have been obtained and are and will be in full force and effect for the duration of the Agreement, and all conditions of any such consents have been complied with.

B. **Standard of Care.** Contractor covenants that (i) it, its personnel, its affiliates, and its affiliates personnel performing services hereunder have the necessary knowledge, skills, experience, qualifications, and resources to perform the services in accordance with the terms and conditions of the contract, and (ii) the services shall be performed with professional competence and due professional care in accordance with established standards, federal, foreign, state or local laws, regulations and associated interpretations relative to the appropriate jurisdiction as of the date the services are provided and such additional terms and conditions set forth in the contract, including all appendices attached thereto. All services performed by Contractor shall be subject to the approval of NYSTRS.

C. **Non-Infringement and Indemnification.** Contractor covenants that it will perform its, and it will cause its employees, consultants and subcontractors (collectively, "Contractor Personnel") to perform their, responsibilities and provide the services and deliverables hereunder in a manner that does not infringe or misappropriate any patent, trademark, copyright, trade secret or other intellectual property or proprietary right of any third party. Contractor covenants that it will either own, or otherwise have sufficient rights to license to NYSTRS (at no additional cost to NYSTRS), all of the deliverables furnished by Contractor in connection with the services provided herein. To the fullest extent permitted by law, Contractor shall fully indemnify, defend and hold NYSTRS and each NYSTRS Indemnitee from and against any and all claims, suits, actions, damages, losses and expenses and costs, including, but not limited to, attorneys’ fees, imposed against NYSTRS or any NYSTRS Indemnitee arising from or related to any actual or alleged infringement of any such third-party right, which liability shall not be limited to the insurance coverage herein prescribed.

If any service or deliverable does not conform to the covenant set forth in this section, Contractor may (at no additional cost to NYSTRS) procure the right for NYSTRS to continue to use the results of the service or deliverable, or may (at no additional cost to NYSTRS) re-perform the service or replace the deliverable so that it is non-infringing and meets the original specifications. If the preceding remedies are not reasonably available, upon request by NYSTRS, Contractor will refund the price paid by NYSTRS for the infringing portion of the services and refund the price paid for infringing deliverables that are returned to Contractor. NYSTRS covenants that it owns or otherwise has sufficient rights to furnish Contractor all data and other information and materials furnished by NYSTRS to Contractor in connection with the services or deliverables.

D. **Warranty for Deliverables/Workmanship.** Contractor warrants and represents that Contractor has full ownership, clear title free of all liens, to, or that Contractor has obtained on behalf of NYSTRS applicable perpetual, fully-paid up, royalty-free license rights to use, any work product or software associated with any deliverable for the purposes stated in this Agreement. Contractor shall fully indemnify, defend and hold NYSTRS and each NYSTRS Indemnitee from and against any and all claims, suits, actions, damages, losses and expenses and costs, including, but not limited to, attorneys’ fees, imposed against NYSTRS or any NYSTRS Indemnitee arising from or relating to any breach of this warranty. NYSTRS may require Contractor to furnish appropriate written documentation establishing the above rights.
and interests as a condition of payment. NYSTRS’ request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

Contractor warrants and represents that all products or deliverables specified and furnished by or through Contractor under this Agreement meet the completion criteria set forth herein and any subsequent project definitions or statement(s) of work.

E. Security and Safety. Contractor covenants that Contractor and Contractor Personnel performing the services, while present at the facilities of NYSTRS, will comply with the security, administrative, and safety policies of NYSTRS.

F. Pricing. Contractor represents (i) that it has priced the terms of this Agreement fairly and reasonably with consideration of the individuality of NYSTRS and the scope of services provided thereto; and (ii) that the prices Contractor charges under this Agreement will be as favorable as those now or hereafter offered by Contractor to other NYS state government agencies or entities purchasing similar products under similar terms and conditions. In the event that the prices Contractor charges under this Agreement exceed those now or hereafter offered by Contractor to other NYS state government agencies or entities purchasing similar products under similar terms and conditions, then Contractor shall immediately refund the excess to NYSTRS.

21. Conflicts of Interest

A. Contractor. Contractor shall at all times maintain objectivity and be free of conflicts of interest. Contractor shall notify NYSTRS of any existing conflicts of interest, as well as any future changes or developments with or concerning Contractor during the term of this Agreement that Contractor in good faith reasonably believes could create a conflict of interest, or the appearance of a conflict of interest, that may affect Contractor’s duties and responsibilities to NYSTRS or its abilities to provide professional and competent services agreed to within this Agreement.

In the absence of a waiver, Contractor shall refrain from rendering similar services in a manner which would create a conflict of interest with respect to such circumstances. If at any time Contractor believes that its objectivity or independence are compromised to the extent that it cannot perform its services in accordance with the laws, regulations, and professional standards applicable to the Contractor, Contractor may elect to resign as NYSTRS’ Contractor and terminate this Agreement at such time. Such a termination shall be deemed termination for cause.

B. NYSTRS. NYSTRS shall use commercially reasonable efforts to notify Contractor of any NYSTRS developments or changes that NYSTRS reasonably believes may affect the services to be provided hereunder; provided, however, that NYSTRS shall have no liability whatsoever to Contractor, and Contractor shall not be excused from performing any of its duties or obligations or be relieved of any of its liabilities under this Agreement, if NYSTRS fails to so notify Contractor of any such NYSTRS developments or changes. Contractor further agrees to provide NYSTRS an annual written representation certifying to any conflicts of interest, or lack thereof, of which Contractor has knowledge that may affect Contractor’s duties and responsibilities to NYSTRS or Contractor’s ability to provide professional and competent services pursuant to this Agreement.

22. Use of Name; Publicity

Each party agrees that it will not, without prior written consent of the other party in each instance, use in advertising, publicity or otherwise the name of such party or any of its affiliates, or any partner or employee of such party or its affiliates, nor any trade name, trademark, service mark, logo or slogan of such party or its affiliates.

Contractor shall not use photographs, audio recordings or any other form of media, whether digital or physical, that includes NYSTRS or any of its employees without the express prior written approval of NYSTRS’ General Counsel.

23. No Solicitation of Personnel

During the period of performance for the services governed by this Agreement, neither party will actively solicit for hire, nor shall either party knowingly allow its employees or personnel to solicit for hire, any employee or personnel of the other party associated with the performance of this Agreement without the prior written consent of the other party. This provision shall not restrict in any way the right of either party to solicit generally in the media for required personnel, or hire an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party. In addition, this provision shall not restrict
employees, contractors, or representatives of either party from pursuing on their own initiative employment opportunities from or with the other party.

24. **Electronic Communication**

In performing services under this Agreement, the parties may wish to communicate electronically, whether by facsimile, electronic mail or similar methods (collectively, “E-mail”). However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Unless notified otherwise, NYSTRS hereby consents to the use of E-mail, when appropriate, for communications with Contractor, provided, however, that any electronic transmission of any system information or deliverable must be encrypted or password protected.

Each party shall, at its own cost, carry out commercially reasonable procedures to protect the integrity of data transmitted by E-mail, on disk or otherwise. In particular, but without limitation, it is the recipient’s responsibility to carry out a virus check on any attachments before launching or otherwise using any documents, whether received by E-mail or on disk or otherwise.

25. **Notices**

A. **General.** Any notice or other communication given pursuant to this Agreement shall be in writing and shall be effective on the date of actual receipt. Any notice may be given by E-mail if a signed written original is sent by first class or a reputable overnight delivery service with tracking capabilities within twenty-four (24) hours thereafter. Notices delivered by hand or mail shall be addressed to such party at the address set forth in this Agreement. Either party may designate a different address by notice to the other given in accordance herewith. Notwithstanding any of the foregoing, service of process may be served on NYSTRS by hand only.

B. **Notice of Security and/or Privacy Incident.** If Contractor, or its subcontractor, suspects, discovers or is notified of a data security incident or potential breach of security and/or privacy relating to NYSTRS Confidential Information that Contractor received from NYSTRS, Contractor shall immediately, but in no event later than forty-eight (48) hours from suspicion, discovery or notification of the incident or potential breach, notify NYSTRS of such incident or potential breach. Contractor shall, upon NYSTRS’ written request, investigate such incident or potential breach, inform NYSTRS of the results of any such investigation, and assist NYSTRS in maintaining the confidentiality of such information. In addition to the foregoing, Contractor shall provide NYSTRS with any assistance necessary to comply with any state and/or federal laws requiring the provision of notice of any privacy incident or security breach with respect to any NYSTRS Confidential Information to the affected or impacted individuals and/or organizations, in addition to any notification to applicable state and federal agencies. Contractor agrees that it shall reimburse NYSTRS for all expenses, costs, attorneys’ fees, and resulting fines, penalties, and damages associated with such incident, breach, investigation and/or notification.

26. **Waiver**

The failure of NYSTRS or Contractor in any one or more instances to insist upon strict performance of any of the terms of this Agreement or in exercising any right, power or privilege in respect of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or to exercise any such right, power or privilege on any other or future occasion.

27. **Severability**

If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

28. **Independent Contractor**

Contractor is and shall be, in all respects, an independent contractor in performing the services described in this Agreement and not in an employer-employee, joint venture, principal-agent, partnership or fiduciary relationship with NYSTRS. Neither party hereto shall have the authority to bind the other party or otherwise incur liability on behalf of the other party unless expressly set forth in writing in this Agreement. NYSTRS will have no obligation whatsoever to provide any employee benefits or privileges of any kind or nature, including but not limited to Workers’ Compensation coverage,
Appendix C  Sample Contract Provisions

Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit, to Contractor or its employees, agents or contractors. In accordance with its status as an independent contractor, Contractor covenants and agrees that Contractor, its agents, contractors and employees will not hold itself or themselves out as or claim to be an officer or employee of NYSTRS.

29. Third Party Beneficiaries

No person or entity not a party hereto will be deemed to be a third-party beneficiary of this Agreement or any provision hereof.

30. Force Majeure

Neither party shall be liable to the other for any delay or failure to perform any services or obligations set forth in this Agreement that results from causes beyond its reasonable control, including but not limited to acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, terrorism, fire, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions. Any such non-performing party shall provide prompt notice to the other party of such circumstances, shall be entitled to a reasonable extension of the time for performing such obligations, and shall resume full performance of such obligations and responsibilities promptly upon removal or cessation of any such cause.

31. Headings

The headings in this Agreement are for convenience only, do not affect the meaning of this Agreement, and are not be taken into consideration in interpreting this Agreement.

32. Business Continuity Management

Notwithstanding the force majeure provisions of this Agreement, Contractor agrees to create, implement and maintain a documented business continuity management framework to provide a comprehensive and structured response capability that caters for planned and unplanned interruption events. In the circumstances that Contractor experiences a disruption (interruption event) in Contractor’s ability to provide the work or services, or Contractor’s facilities are incapacitated for any reason, Contractor shall immediately notify NYSTRS and implement Contractor’s appropriate business continuity plan annexed to each Statement of Work (SOW) or this Agreement. Contractor is responsible for backup and record protection, including equipment, program and data files, and the maintenance of a disaster recovery and contingency plan. Such plans must be tested periodically (at least annually) with results provided to NYSTRS. Interdependencies between vendors must be considered when determining business continuity requirements. NYSTRS expects each site of Contractor to be governed by Contractor’s business continuity management framework.

33. Initial Disaster Recovery

Notwithstanding the force majeure provisions of this Agreement, in the event that Contractor experiences a disruption in Contractor’s ability to provide the work or services, from any cause, or Contractor’s facilities are incapacitated for any reason, Contractor shall immediately notify NYSTRS and implement Contractor’s disaster recovery procedures. NYSTRS reserves the right to suspend this Agreement, at its discretion, until performance of the work or services can be resumed. NYSTRS during any time in which Contractor is unable to perform the work or services due to a disruption may deduct from applicable fees, any costs or expenses that NYSTRS incurs as a result of Contractor’s inability perform the work or services.
Contractor shall not commence work and shall not permit any subcontractor or sub-subcontractor to commence any work, until it has obtained all insurance referred to herein and provided proof as set forth and has been approved by NYSTRS.

Contractor shall secure, pay for and maintain and shall cause all subcontractors to secure, pay for and maintain, the following insurance policies in full force and effect during the term of the agreement:

1. **Property Insurance** upon all tools, material and equipment (owned, borrowed or leased by the contractor or their employees) to the full replacement value thereof during the full term of this contract. This insurance shall insure against damage or loss caused by fire and all other perils covered by a standard “All Risk” insurance policy. Failure of the contractor to secure and maintain adequate coverage shall not obligate NYSTRS or its agents or employees for any losses.

2. **Workers Compensation** affording coverage under the Workers Compensation laws of the State of New York and Employers Liability coverage subject to a limit of no less than $1,000,000 each employee, $1,000,000 each accident, and $1,000,000 policy limit.

3. **Commercial General Liability Insurance** written on the most current ISO form CG 00 01 (or its equivalent) with limits of $1,000,000 per occurrence Bodily Injury and Property Damage Combined, $1,000,000 per occurrence Personal & Advertising Injury, $2,000,000 aggregate Products and Completed Operations Liability and $2,000,000 General (per project) Aggregate. The policy shall be written on an occurrence basis. Any deductible shall be the responsibility of the contractor. Policy shall be endorsed to include NYSTRS, its managing agent, NYSTRS lender (if required) and all other entities that NYSTRS may reasonably require as “Additional Insureds” using Form CG 2010 and Form CG 2037 or their equivalents. Definition of Additional Insured shall include all Officers, Directors and Employees of the named entity, its agents and consultants. Further, policy shall provide coverage for the additional insureds on a primary and non-contributory basis, irrespective of any other insurance, whether collectible or not.

The policy shall not contain exclusions relating to:

- **a.** contractual liability
- **b.** independent contractors
- **c.** gravity related injuries
- **d.** injuries sustained by employee of an insured or any insured
- **e.** height limitations
- **f.** residential work (if applicable)

Completed Operations coverage shall remain in effect for not less than three (3) years after completion of the work including coverage for Additional Insureds.

4. **Automobile Liability Insurance** for Bodily Injury and Property Damage in the amount of $1,000,000 combined and covering all owned, non-owned and hired vehicles, naming NYSTRS as additional insured.

5. **Umbrella Liability Insurance** for the total limit purchased by Contractor but, not less than a $5,000,000 limit providing excess coverage over all limits and coverages noted in paragraph 2, 3, and 4 above. This policy shall be written on an "occurrence" basis and shall “Follow Form” the underlying Commercial General Liability policy.

6. **Waiver of Subrogation.** Contractor agrees to waive its right of recovery and/or subrogation against NYSTRS and all Additional Insureds. All policies (except automobile) shall allow for a Waiver of Subrogation.

All policies noted in above shall be written with insurance companies licensed to do business in the State of New York and rated no lower than A-8 in the most current edition of A.M. Best’s Property-Casualty Key Rating Guide.

7. **EVIDENCE (NOTICES) OF COMPLIANCE**

All policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification, NYSTRS shall receive thirty (30) days prior written notice thereof.

Contractor shall furnish NYSTRS with Certificates of Insurance, together with copies of the additional insured endorsement, no later than (5) days prior to commencement of work and upon NYSTRS’s request, shall provide NYSTRS, with complete copies of the aforementioned policies including all endorsements attached thereto evidencing compliance with all insurance provisions noted above.
All Certificates or policy termination notices should be delivered to NYSTRS Risk Dept., 10 Corporate Woods Dr., Albany, NY 12211.

(8) INDEMNIFICATION/HOLD HARMLESS

It is understood and agreed that to the fullest extent permitted by law, the Contractor shall be solely responsible for, and shall indemnify, defend and hold harmless NYSTRS and its agents, affiliates, employees, members, subsidiaries and related entities (collectively, NYSTRS, as used herein throughout), from and against any and all claims, losses, costs, liabilities, damages, injuries or death, of any nature whatsoever (collectively “Claims”) actually or allegedly arising out of or relating to Contractor’s work or the work of any subcontractor retained by Contractor. Contractor’s indemnity, defense and hold harmless obligations hereunder are triggered regardless of whether such “Claims” are attributable in part to any fault or negligence on the part of the NYSTRS.

Contractor shall, on demand, immediately defend NYSTRS in any lawsuit commenced against NYSTRS which actually or allegedly arises out of Contractor’s work or the work of any Subcontractor. Contractor shall reimburse NYSTRS for any and all such “Claims” and lawsuits, including any costs or expenses NYSTRS incurs in defending a lawsuit, pursuing indemnification and enforcing the terms of this agreement. Contractor shall ensure that no work is performed by a Subcontractor unless that Subcontractor is bound by written agreement containing indemnity language at least as broad as that contained herein favoring NYSTRS. In addition, Contractor agrees that the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workers Compensation acts, disability benefit acts or other employee benefit acts.
EXHIBIT 1

Firm Name

Address

Telephone Number

Contact Person

E-mail Address

Date

Does the Contact Person listed above have the authority to legally bind the firm?

If not, please indicate who has such authority.

All proposals must include answers to all questions set forth in this Exhibit 1. If any question requires an opinion or analysis, but the firm submitting the proposal has no opinion or analysis to include, then the firm should so indicate in its answer to that question. The answers must be organized and presented in the proposal in the same sequence as the questions are presented. All factual responses will be subject to verification for completeness and accuracy.

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1. **BIDDER CERTIFICATIONS**

   By signing below, bidder agrees as follows:

1.1. Bidder is willing to perform the services as described in this RFP, and commit to perform the work within the required time schedule, if any.

1.2. This proposal is a firm and irrevocable offer good for 180 days from the bid due date.

1.3. Bidder agrees to all the terms, conditions and provisions of this RFP governing the procurement process.

1.4. Bidder has reviewed any and all addenda/amendments issued.

1.5. Bidder has reviewed Standard Clauses for NYS Contracts (Appendix A), NYSTRS General Information Provided to Bidders (Appendix B), Key Contract Provisions (Appendix C) and NYSTRS Insurance Requirements (Appendix D). If awarded, bidder is willing to enter into a contract containing, at a minimum, the aforementioned provisions. **Any exception(s) to these terms and conditions must be explicitly stated in Section 3 below.**

   (Signature) __________________________   (Date) __________________________

   (Print Name) __________________________   (Title) __________________________
2. EXECUTIVE SUMMARY

Bidders shall provide an executive summary that includes the firm’s understanding of the work to be performed and commitment to perform the work within the time schedule.

3. EXCEPTIONS

3.1. MATERIAL DEVIATIONS

Bidders are cautioned that any material exceptions could provide an advantage to the vendor taking the exceptions. Due to this fact, NYSTRS will only consider making an award to a vendor with exceptions if such exceptions do not constitute a “material deviation” from these specifications. The vendor must drop “material” exceptions from their proposal, or else risk losing an award altogether. “Material” term(s), whether a clarification or exception, is (are) “material” if it gives or concedes to vendor some advantage which the other vendors did not have, or if it takes away a right or benefit which NYSTRS would otherwise be entitled to under the specifications. Whether or not an exception is considered “material” is determined by NYSTRS in its sole discretion by asking the following questions: Would the vendor gain a benefit or advantage from the exception which would permit him to offer a lower price than other proposers who did not take the same exceptions? Is NYSTRS agreeing to take something less? NYSTRS may negotiate exceptions with a vendor if they are not material as such terms are defined above. Where a vendor’s exceptions materially alter the terms of these specifications, NYSTRS has the right to ask the vendor to withdraw the exception, or in its sole discretion may reject the proposal.

Please note that bidders’ exceptions (if any) are factored into the evaluation of the proposals. If bidder is awarded a contract, NYSTRS will not entertain any modifications to contract terms that are not identified below. Additionally, receiving an award does not necessarily indicate NYSTRS agreement with or acceptance of such exception(s).

3.2. BIDDER’S EXCEPTIONS.

If bidder does not have any exceptions, indicate “none” in the space below.
4. FREEDOM OF INFORMATION LAW

NYSTRS abides by the requirements set forth in the Freedom of Information Law (Article 6 of the New York State Public Officers Law, “FOIL”) governing the disclosure of public records. The proposal of the successful bidder and the proposals of unsuccessful bidders may be subject to disclosure under FOIL.

However, pursuant to §87.2 of FOIL, NYSTRS may deny access to those portions of proposals or portions of a successful bidder’s contract which meet the criteria for exemption. Please note that all information that a bidder may claim as proprietary, copyrighted, or rights-reserved is not necessarily protected from disclosure under FOIL.

Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder/Contractor. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by NYSTRS to be sufficient without specific justification as to why disclosure of particular information in the bid would cause substantial injury to the competitive position of the bidder. Bidders intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. NYSTRS’ receipt or acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

NYSTRS will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

Bidder shall indicate if there is specific information in its proposal, which the bidder claims to be proprietary and/or trade secret information, that meets the definition set forth in FOIL §87.2.

☐ Yes (provide details below) ☐ No (no exemptions claimed)

If “Yes,” bidder must set forth the specific reasons for the claimed exemption. Cite the section of the law under which the bidder claims exemption, as well as the page number and paragraph or section number of the bid proposal.
5. **NEW YORK STATE FINANCE LAW §139-L; LABOR LAW §201-G**

A bid shall not be considered for award nor shall any award be made to a bidder who has not complied with New York State Finance Law §139-L.1(a); provided, however, that if the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor.

By submission of a bid, each person signing on behalf of the bidder certifies (and in the case of a joint bid each party thereto certifies as to its own organization) under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of §201-G of New York Labor Law.

- Bidder certifies that it has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees.

- Bidder has not implemented a written policy addressing sexual harassment prevention in the workplace and/or does not provide annual sexual harassment prevention training to its employees because:

**Note:** Any bid or proposal made to NYSTRS by a **corporate** bidder shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid, and the inclusion therein of the aforementioned certification, as the act and deed of the corporation.
6. **WORK PLAN**

Submit a preliminary work plan including a proposed timeline for performance of the services described in this RFP. Include a listing of staff hours budgeted by staff level. Include your proposed methodology for the following:

6.1. Audit methodology

6.2. Audit risk considerations

6.3. Areas of audit focus

6.4. Proposed interaction with/use of the internal audit function

6.5. Ability to complete the engagement within established deadlines

6.6. Reporting approach – interim reports, management reports, presentations to management and Board

7. **TECHNICAL EXPERIENCE OF THE FIRM**

Provide a statement supporting the qualitative reasons the firm should be considered for the contract. Include pertinent facts regarding:

7.1. Prior experience auditing Public Employee Retirement Systems (PERS)

7.2. Please provide a list of all PERS audited by the firm over the past five (5) years

7.3. Available professional resources with audit experience in our IT environment

7.4. Available professional resources in the area of actuarial consulting

7.5. Available professional resources in the area of investment accounting and reporting

7.6. Available professional resources in the area of federal taxation

8. **QUALIFICATION OF FIRM AND STAFF ASSIGNED**

8.1. State the size of the firm and the size of the audit staff.

8.2. Provide a list of your principal offices and indicate the location from which the work on this engagement will be accomplished.

8.3. Indicate the number and experience level of professional staff proposed for this engagement; and whether on a full- or part-time basis.

8.4. Identify the specific partner(s) and manager(s) who will be assigned to the engagement. Indicate the NYS CPA licensure status of each person. Submit resumes of each person, emphasizing their PERS experience. Provide as much information as possible about the qualifications and experience of the staff to be employed on this engagement. Indicate how staff competency level over the term of the contract will be assured. NYSTRS reserves the right to perform background checks for any person working on an audit engagement, including knowledge experts identified in section 8.5 below.

8.5. Specifically identify and provide resumes for those individuals in your firm who can be called upon with specific questions in the following areas:
EXHIBIT 1

8.5.1. Information technology
8.5.2. Federal taxation
8.5.3. Actuarial services
8.5.4. GASB and FASB pronouncements
8.5.5. Accounting for investments
8.5.6. PERS and defined benefit pension plans

8.6. A statement of your firm’s potential conflicts of interest, should it be selected for this proposal.
8.7. Submit a copy of your firm’s latest Peer Review Report and accompanying management letter.

9. REFERENCES

A list of at least five (5) references for which your proposed team (not the firm overall) performed the types of services outlined in this RFP within the past three years. Ideally, these firm references should be similar in size and nature to NYSTRS (i.e., a statewide PERS). Please include the name and address of the firm or agency as well as a contact person, telephone number, and email address for each reference.
COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor’s business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

DEFINITIONS

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of “Reporting Entity” but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does not include “sibling organizations” (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X requires an authorized contact for the questionnaire information.

All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf.
## I. LEGAL BUSINESS ENTITY INFORMATION

<table>
<thead>
<tr>
<th>Legal Business Entity Name</th>
<th>EIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address of the Principal Place of Business (street, city, state, zip code)</td>
<td>New York State Vendor Identification Number</td>
</tr>
<tr>
<td>Email</td>
<td>Website</td>
</tr>
</tbody>
</table>

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

<table>
<thead>
<tr>
<th>Type</th>
<th>Name</th>
<th>EIN</th>
<th>Status</th>
</tr>
</thead>
</table>

1.0 Legal Business Entity Type – Check appropriate box and provide additional information:

- [ ] Corporation (including PC) Date of Incorporation
- [ ] Limited Liability Company (LLC or PLLC) Date of Organization
- [ ] Partnership (including LLP, LP or General) Date of Registration or Establishment
- [ ] Sole Proprietor How many years in business?
- [ ] Other Date Established

If Other, explain:

1.1 Was the Legal Business Entity formed or incorporated in New York State? [ ] Yes [ ] No

If ‘No,’ indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing is not available.

- [ ] United States State [ ]
- [ ] Other Country [ ]

Explain, if not available:

1.2 Is the Legal Business Entity publicly traded? [ ] Yes [ ] No

If “Yes,” provide CIK Code or Ticker Symbol

1.3 Does the Legal Business Entity have a DUNS Number? [ ] Yes [ ] No

If “Yes,” Enter DUNS Number

1.4 If the Legal Business Entity’s Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State? [ ] Yes [ ] No [ ] N/A

(Select “N/A,” if Principal Place of Business is in New York State.)

If “Yes,” provide the address and telephone number for one office located in New York State.
I. LEGAL BUSINESS ENTITY INFORMATION

1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?

If “Yes,” check all that apply:
- [ ] New York State certified Minority-Owned Business Enterprise (MBE)
- [ ] New York State certified Women-Owned Business Enterprise (WBE)
- [ ] New York State Small Business (SB)
- [ ] Federally certified Disadvantaged Business Enterprise (DBE)

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Percentage Ownership (Enter 0% if not applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.
- [ ] Legal Business Entity
  - Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)
- [ ] Organizational Unit within and operating under the authority of the Legal Business Entity
  - See definitions of “Reporting Entity” and “Organizational Unit” for additional information on criteria to qualify for this selection.
  - Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)

Telephone ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?

If “Yes,” enter DUNS Number

[ ] Yes [ ] No

e) Identify the designated manager(s) responsible for the business of the Reporting Entity. For each person, include name and title. Attach additional pages if necessary.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
INSTRUCTIONS FOR SECTIONS III THROUGH VII
For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY
Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:

3.0 Sanctioned relative to any business or professional permit and/or license?
☐ Yes ☐ No ☐ Other

3.1 Suspended, debarred, or disqualified from any government contracting process?
☐ Yes ☐ No ☐ Other

3.2 The subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?
☐ Yes ☐ No ☐ Other

3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:
   a) Any business-related activity; or
   b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?
☐ Yes ☐ No ☐ Other

   For each “Yes” or “Other” explain:

IV. INTEGRITY – CONTRACT BIDDING
Within the past five (5) years, has the reporting entity:

4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, debarment for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?
☐ Yes ☐ No

4.1 Been subject to a denial or revocation of a government prequalification?
☐ Yes ☐ No

4.2 Been denied a contract award or had a bid rejected based upon a non-responsibility finding by a government entity?
☐ Yes ☐ No

4.3 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?
☐ Yes ☐ No

4.4 Agreed to a voluntary exclusion from bidding/contracting with a government entity?
☐ Yes ☐ No

4.5 Initiated a request to withdraw a bid submitted to a government entity in lieu of responding to an information request or subsequent to a formal request to appear before the government entity?
☐ Yes ☐ No

   For each “Yes,” explain:

V. INTEGRITY – CONTRACT AWARD
Within the past five (5) years, has the reporting entity:

5.0 Been suspended, cancelled or terminated for cause on any government contract including, but not limited to, a non-responsibility finding?
☐ Yes ☐ No

5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?
☐ Yes ☐ No

5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity?
☐ Yes ☐ No
### VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

<table>
<thead>
<tr>
<th>Section</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.0</td>
<td>Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>If “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.1</td>
<td>Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over $25,000?</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>If “Yes,” provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.2</td>
<td>Within the past five (5) years, have any liens or judgments (not including UCC filings) over $25,000 been filed against the Reporting Entity which remain undischarged?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

<table>
<thead>
<tr>
<th>8.3 In the last seven (7) years, has the <strong>Reporting Entity</strong> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as “Initiated,” “Pending” or “Closed.” Provide answer below or attach additional sheets with numbered responses.

<table>
<thead>
<tr>
<th>8.4 During the past three (3) years, has the <strong>Reporting Entity</strong> failed to file or pay any tax returns required by federal, state or local tax laws?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the **Reporting Entity** failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.

<table>
<thead>
<tr>
<th>8.5 During the past three (3) years, has the <strong>Reporting Entity</strong> failed to file or pay any New York State unemployment insurance returns?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

If "Yes," provide the years the **Reporting Entity** failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

<table>
<thead>
<tr>
<th>8.6 During the past three (3) years, has the <strong>Reporting Entity</strong> had any government audit(s) completed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

If "Yes," did any audit of the **Reporting Entity** identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance?

If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

### IX. ASSOCIATED ENTITIES

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity. (See definition of “associated entity” for additional information to complete this section.)*

<table>
<thead>
<tr>
<th>9.0 Does the <strong>Reporting Entity</strong> have any Associated Entities?</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

Note: All questions in this section must be answered if the **Reporting Entity** is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

<table>
<thead>
<tr>
<th>9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

a) Any business-related activity; or
b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness;
## IX. ASSOCIATED ENTITIES

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.*

(See definition of “associated entity” for additional information to complete this section.)

If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

<table>
<thead>
<tr>
<th>9.2</th>
<th>Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over $50,000?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

If “Yes,” provide an explanation of the issue(s), the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant’s name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

<table>
<thead>
<tr>
<th>9.3</th>
<th>Within the past five (5) years, has any Associated Entity:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
<td>Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>b)</td>
<td>Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>c)</td>
<td>Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>d)</td>
<td>Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of $500,000?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>e)</td>
<td>Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?</td>
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<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>f)</td>
<td>Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
<tr>
<td>g)</td>
<td>Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?</td>
</tr>
<tr>
<td></td>
<td>□ Yes □ No</td>
</tr>
</tbody>
</table>

For each “Yes,” provide an explanation of the issue(s), identify the Associated Entity’s name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

## X. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE

<table>
<thead>
<tr>
<th>Name</th>
<th>Telephone</th>
<th>Ext.</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
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</table>

<table>
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<tr>
<th>Title</th>
<th>Email</th>
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</tbody>
</table>
Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity’s business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity’s responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity’s responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

Sworn to before me this __________ day of _____________________________, 20___;

____________________________________________
Notary Public

(Apr 2019)
### Vendor:
Vendor Contact Information (Name, Phone #): 

Vendor’s Web Site: 
Product Name: / Version: 

<table>
<thead>
<tr>
<th>Section</th>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0.</td>
<td><strong>General Technology</strong></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Please describe your System Requirements, including:</td>
<td></td>
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<tr>
<td></td>
<td>• Desktop Requirements</td>
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<tr>
<td></td>
<td>• Browser compatibility</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Database Server Requirements</td>
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</tr>
<tr>
<td></td>
<td>• Web Server Requirements</td>
<td></td>
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<tr>
<td></td>
<td>• Application Server Requirements</td>
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<tr>
<td></td>
<td>• File Server Requirements</td>
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<tr>
<td></td>
<td>• Compatibility with VMWARE Vsphere/ESXi Virtual Server Environment</td>
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<tr>
<td></td>
<td>• Compatibility with Citrix XenApp/XenDesktop Virtual Desktop Environment</td>
<td></td>
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<tr>
<td></td>
<td>• Required 3rd Party Software Components</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Please describe your System Architecture, including:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Server/Application component diagrams</td>
<td></td>
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<tr>
<td></td>
<td>• High Availability components identified</td>
<td></td>
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<tr>
<td></td>
<td>• Network requirements</td>
<td></td>
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<td></td>
<td>• Storage Requirements</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Replication</td>
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<tr>
<td>1.3</td>
<td>Please give an overview of the implementation, including:</td>
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<tr>
<td></td>
<td>• Installation</td>
<td></td>
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<tr>
<td></td>
<td>• Product Upgrades</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Support options/Service Level Agreements</td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>What are the hosting options? (Full on-site, DB on-site, Full off-site)</td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>How are upgrades / maintenance patches handled? Do you have a documented change management plan?</td>
<td></td>
</tr>
<tr>
<td>2.0.</td>
<td><strong>General SLA and Contractual</strong></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>Please list the hours of availability for your application.</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Question</td>
<td>Response</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>2.2</td>
<td>Please indicate your uptime and performance standards. What actions will you take in the event that these standards are not met?</td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Please explain how support is handled?</td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>How is your product licensed? (Site, named user, etc...)</td>
<td></td>
</tr>
<tr>
<td>3.0</td>
<td>Security</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>What base level of assurances of privacy and security does the SaaS vendor provide, including policies/standards physical controls • physical security of data centers • physical security of data storage, including backup tapes and off-site locations</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Has your SaaS function been certified via internal and 3rd party application security assessments? Does it continually or regularly undergo internal and 3rd party system and application vulnerability assessments?</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Describe the provisions taken to ensure the security of customer data in the hosted solution.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Describe the steps taken to harden the application and its underlying components.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Please explain the Intrusion Detection Systems in use.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Please explain the type of web application firewall in use.</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Please explain how your systems, accounts, and customer data are segregated.</td>
<td></td>
</tr>
<tr>
<td>3.5</td>
<td>Please explain your incident response model for applications that would contain NYSTRS data.</td>
<td></td>
</tr>
<tr>
<td>3.6</td>
<td>Please explain the security controls you exercise to mitigate the OWASP Top 10.</td>
<td></td>
</tr>
<tr>
<td>4.0</td>
<td>Identity, Authentication and Access Management</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>What mechanisms and practices are in place and practiced for identity management, including integration (single-sign-on, federation, local accounts, etc.)?</td>
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<tr>
<td>Section</td>
<td>Question</td>
<td>Response</td>
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<tr>
<td>4.2</td>
<td>What mechanisms are supported for system authentication and authorization?</td>
<td></td>
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<tr>
<td>4.3</td>
<td>Describe the granularity of access controls available and how access privileges and controls for data access are managed.</td>
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</tr>
<tr>
<td>4.4</td>
<td>What type of client-side data export is possible through the systems described, including reports? Can this be controlled?</td>
<td></td>
</tr>
</tbody>
</table>
| 4.5 | Describe the methods and mechanisms used for record and document transmission, including:  
• Accepting submission of data from your organization  
• Disseminating reports and records to your organization  
• Safeguards against accidental misrouting of data (e.g., if e-mail based, etc.) |  |
| 4.6 | What features are provided for access logging? Is all access, including administrative accounts, controlled and logged (i.e. firewalls, file system permissions, ACLs, database table permissions, packet logs, etc.)? If not, please explain. |  |
| 4.7 | What features are provided for auditing and reporting access privileges, account maintenance, segregation of duties, etc.? |  |
| 5.0 | **Web-based Interfaces & SSL Implementations** |  |
| 5.1 | Does the product rely on Java, Adobe Flash Player, or similar technologies on the client side for access of a web-based system? If so, what policies are in place to ensure the latest security updates for required client-side components don’t conflict with product requirements? |  |
| 5.2 | If there is an SSL implementation for a web-based interface, what SSL or TLS protocols are supported? |  |
| 5.3 | Is the cipher suite supported 128 bits or greater? |  |
| 5.4 | What is the key strength of your SSL implementation? |  |
| 6.0 | **Encryption** |  |
## Technology Questionnaire

<table>
<thead>
<tr>
<th>Section</th>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td><strong>Describe the encryption implemented for data in transit.</strong> Is/will data be transmitted in an encrypted form at all times? Provide details of encryption mechanisms, ciphers, and key sizes used. Are minimum standards enforced? If so, what are these?</td>
<td></td>
</tr>
<tr>
<td>6.2</td>
<td><strong>Describe the encryption implemented for data at rest, including backups.</strong> Is/will data be stored in an encrypted form at all times? Provide details of encryption mechanisms, ciphers, and key sizes used. Are minimum standards enforced? If so, what are these?</td>
<td></td>
</tr>
<tr>
<td>6.3</td>
<td><strong>Describe the controls and safeguards in place and practices and procedures followed to ensure secure and proper encryption key management</strong></td>
<td></td>
</tr>
<tr>
<td>6.4</td>
<td><strong>Describe the data-loss prevention technologies and process in place to protect against customer data loss</strong></td>
<td></td>
</tr>
<tr>
<td>7.0.</td>
<td><strong>Resilience</strong></td>
<td></td>
</tr>
<tr>
<td>7.1</td>
<td><strong>Describe business continuity and disaster recovery provisions and guarantees provided with solution proposed.</strong> What are your current, tested plans?</td>
<td></td>
</tr>
<tr>
<td>7.2</td>
<td><strong>Do hosting services include fully redundant, significantly geographically separated data centers?</strong> Are any data centers that will be hosting your organization data located outside the U.S.? Can this be restricted?</td>
<td></td>
</tr>
<tr>
<td>7.3</td>
<td><strong>Describe your data backup processes (frequency, security).</strong></td>
<td></td>
</tr>
<tr>
<td>7.4</td>
<td><strong>What are your firm’s Recovery Time Objectives and Recovery Point Objectives?</strong></td>
<td></td>
</tr>
<tr>
<td>8.0.</td>
<td><strong>Data Management</strong></td>
<td></td>
</tr>
<tr>
<td>8.1</td>
<td><strong>Please describe your approach to insuring NYSTRS ownership of data.</strong></td>
<td></td>
</tr>
<tr>
<td>8.2</td>
<td><strong>For all data collected or created via the service offering, how many instances/copies of data resources will exist, and where will these be located?</strong></td>
<td></td>
</tr>
<tr>
<td>8.3</td>
<td><strong>What system and data access management, reporting, and record keeping tools are available for data and systems associated with this service offering?</strong></td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Question</td>
<td>Response</td>
</tr>
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<td>---------</td>
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<tr>
<td>8.4</td>
<td>Does the SaaS provider use multi-source cloud providers to host the data, including backups? If so, describe segregation and security provisions provided with solution proposed with respect to co-located systems, data, etc. (e.g., does each customer have a separate and distinct environment for processing / storage, are shared resources separated via logical controls, etc.)</td>
<td></td>
</tr>
<tr>
<td>8.5</td>
<td>In the event NYSTRS decides not to continue or renew a service arrangement, describe the process / methods / costs associated to 1.) providing any data stored to NYSTRS and 2.) guarantee data has been securely purged from hosted environment, including backups</td>
<td></td>
</tr>
<tr>
<td>8.6</td>
<td>At what point, if ever, is data archived or moved to cheaper storage? How can archived data be accessed? Is there a charge to either archive data and/or to access archived data? What are the options for providing dumps of the data?</td>
<td></td>
</tr>
<tr>
<td>8.7</td>
<td>If the provider discontinues service, what assurances are made on the ability to move organization data to either a system owned by your organization or another vendor? How portable is the data/files? Can it be exporting out to customer-side data backups or archives? What assurances are granted that all instances of NYSTRS data are fully and securely deleted, including instances on backup (including tape) and on all providers and locations where multi-sourced/multi-sited?</td>
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<tr>
<td>8.8</td>
<td>It is the expectation of NYSTRS that our data will not be shared without our knowledge and permission. Will NYSTRS data be shared with or hosted by any third parties? Briefly explain why each of these third parties will have access to NYSTRS data, and what you do to insure the security of the data in this case.</td>
<td></td>
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<tr>
<td>9.0</td>
<td><strong>Data Retention</strong></td>
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<tr>
<td>9.1</td>
<td>Describe how you ensure that the system supports data retention and disposition as required by the NYSTRS record retention requirements, for the duration of the engaged contract, if this is a deemed system of record.</td>
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</tr>
<tr>
<td>Section</td>
<td>Question</td>
<td>Response</td>
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<td>---------</td>
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<tr>
<td>9.2</td>
<td>Describe the process the provider uses to respond to customer requests for system audit, legal discovery requests/holds, etc.? Who is responsible for preserving/retrieving data for purposes of litigation? What costs?</td>
<td></td>
</tr>
<tr>
<td>10.0</td>
<td><strong>Application Development and Integration</strong></td>
<td></td>
</tr>
<tr>
<td>10.1</td>
<td>What coding language is the product developed with and platform developed on? (Objective-c, Swift, Java, .NET, 4.5 Framework, WPF, ASP, etc.)</td>
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<tr>
<td>10.2</td>
<td>What API’s, web service, or other integration points are provided?</td>
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<tr>
<td>10.3</td>
<td>How are customizations requested and implemented as part of the deployment program?</td>
<td></td>
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<tr>
<td>10.4</td>
<td>Is source code made available to client for extending uses or closed source?</td>
<td></td>
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<tr>
<td>10.5</td>
<td>Does each individual client host have its own deployment that is individually customized, or is there one deployment base and clients are segregated to data/access by security?</td>
<td></td>
</tr>
<tr>
<td>10.6</td>
<td>What environments are provided to the client other than production (DEV/TST/QAT)? Is there additional cost for these environments? How is the refresh process for such environments handled?</td>
<td></td>
</tr>
</tbody>
</table>
The successful bidder must be independent of NYSTRS and maintain an impartial, unbiased attitude and avoid any conflict of interest. The proposal should include a disclosure of any conflicts between the prospective consultant’s organization and NYSTRS or between any of the prospective consultant’s personnel and NYSTRS personnel. If no conflicts exist, the proposal should expressly state that fact.

Threats to independence may be created by a wide range of relationships and circumstances. Prospective consultants should evaluate the following broad categories of threats to independence and disclose any potential conflicts in their proposal, including an affirmative response associated with each type of potential conflict (i.e., if no conflict exists, so indicate; otherwise, specify the nature of the conflict).

<table>
<thead>
<tr>
<th>Conflict Threat</th>
<th>Yes (Explain Below)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Self-interest threat</td>
<td></td>
</tr>
<tr>
<td>The threat that a financial or other</td>
<td></td>
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<tr>
<td>interest will inappropriately influence</td>
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<tr>
<td>a consultant’s judgment or behavior</td>
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<tr>
<td>or the behavior of NYSTRS personnel.</td>
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<td>2. Self-review threat</td>
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<tr>
<td>The threat that a consultant that</td>
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<tr>
<td>has provided services will not</td>
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<tr>
<td>appropriately evaluate the results</td>
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<tr>
<td>of previous judgments made or services</td>
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<tr>
<td>performed as part of the services</td>
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<tr>
<td>when forming a judgment significant</td>
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<td>to an assessment.</td>
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<td>3. Bias threat</td>
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<tr>
<td>The threat that a consultant will, as</td>
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<tr>
<td>a result of political, ideological,</td>
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<tr>
<td>social, or other convictions, take</td>
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<tr>
<td>a position that is not objective.</td>
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<td>4. Familiarity threat</td>
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<tr>
<td>The threat that aspects of a</td>
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<tr>
<td>relationship with management or</td>
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<tr>
<td>personnel of NYSTRS, such as a close</td>
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<tr>
<td>or long relationship, or that of an</td>
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<tr>
<td>immediate or close family member,</td>
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<tr>
<td>will lead a consultant to take a</td>
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<tr>
<td>position that is not objective.</td>
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<tr>
<td>5. Undue influence threat</td>
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<tr>
<td>The threat that external influences</td>
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<td>or pressures will impact a</td>
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<tr>
<td>consultant’s ability to make</td>
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<td>independent and objective judgments</td>
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<tr>
<td>and recommendations.</td>
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<tr>
<td>6. Management participation threat</td>
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<tr>
<td>The threat that results from a</td>
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<tr>
<td>consultant taking on the role of</td>
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<tr>
<td>management or otherwise performing</td>
<td></td>
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<tr>
<td>management functions on behalf of</td>
<td></td>
</tr>
<tr>
<td>the entity undergoing an assessment.</td>
<td></td>
</tr>
</tbody>
</table>

Explanation:

*Attach additional sheets, if necessary.*
1. Please provide a lump sum for each of the required services.

<table>
<thead>
<tr>
<th>Fiscal year ending June 30, 2021</th>
<th>System Audit</th>
<th>Actuarial Report</th>
<th>GASB 68 Schedules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Fiscal year ending June 30, 2022</td>
<td>$</td>
<td>$</td>
<td>$</td>
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<tr>
<td>Fiscal year ending June 30, 2023</td>
<td>$</td>
<td>$</td>
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<tr>
<td>Fiscal year ending June 30, 2024</td>
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<tr>
<td>Fiscal year ending June 30, 2025</td>
<td>$</td>
<td>$</td>
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</tbody>
</table>

**Total** $  

Grand Total $  

2. Please provide hourly rates by title, for additional services (if any) that NYSTRS may request during the contract term. For example:

<table>
<thead>
<tr>
<th>Titles</th>
<th>Rates*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Partner</td>
<td>$</td>
</tr>
<tr>
<td>Audit Manager</td>
<td>$</td>
</tr>
<tr>
<td>Audit Senior Associate</td>
<td>$</td>
</tr>
<tr>
<td>Audit Associate</td>
<td>$</td>
</tr>
<tr>
<td>Actuary</td>
<td>$</td>
</tr>
<tr>
<td>Other specialist (Please list)</td>
<td>$</td>
</tr>
</tbody>
</table>

*Upon the first anniversary and each anniversary thereafter, Contractor may request an increase of the hourly rates. In no event shall the increase be greater than the percent change in the Employment Cost Index (ECI) series Compensation, Civilian Workers, All Workers, Not Seasonally Adjusted; as published by the United States Bureau of Labor Statistics, Washington, DC. ECI increase will be determined by using the most recently released index as of 90 days prior to the contract anniversary date, compared to the same quarterly index from the prior year.

3. Other

If there are services that are NOT described in the Scope of Work in this RFP but are required for the successful completion of an annual financial audit in accordance with professional auditing standards, those services should be sufficiently described in your proposal and explained as to necessity. Fees related to such additional scope of work must be separately itemized and included with this Cost Proposal.

By signing this fee schedule, I acknowledges that I have reviewed and am willing to adhere to the requirements of the bid specifications, Appendix A, and Appendix B. I certify that I am legally authorized to bind the firm contractually.

Signature: ________________________________  Title: ________________________________
Typed Name: ________________________________  Date: ________________________________