



REQUEST FOR PROPOSALS

RFP# 24-45

Consulting Services for NYSTRS Board of Trustees

**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 Pricing 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. OVERVIEW OF NYSTRS

Created in 1921 by an act of the state Legislature, NYSTRS 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 420 is responsible for the day-to-day administration. NYSTRS serves 827 employers – including public school districts, BOCES, institutions of higher education and charter schools that elect to participate. As of June 30, 2023, NYSTRS has 448,785 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 the NYSTRS’s website, <https://www.nystrs.org/Library/Publications/Annual-Report>.

2. CALENDAR OF EVENTS

RFP Issued	3/13/2024
Last Date for Inquiries.	3/20/2024 (close of business)
Responses to Inquiries/Clarifications Sent Out	3/25/2024
Response Due Date	4/12/2024, 11:00 a.m. (ET)
Presentations	Week of 6/17/2024
Award	7/15/2024 (on or about)
Contract Commencement	7/1/2024 (on or about)

**Conducted at NYSTRS’ sole discretion. Invitations will be emailed approximately one week prior.*

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

3. PURPOSE

NYSTRS Board of Trustees (“NYSTRS Board”) is seeking proposals from qualified and experienced consultants with expertise in delivering succession planning frameworks, public pension fund executive level market analysis, and related consulting services.

NYSTRS intends to make a single award to the responsive and responsible Bidder, as determined by the evaluation process. The contract term shall not exceed five (5) years (including additional services, if any, as requested by NYSTRS Board). 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.

Proposals submitted in response to this solicitation must comply with the instructions and procedures contained herein.

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 below.** In accordance with State Finance Law §139-j and §139-k, any attempts to contact staff other than the Designate 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
Fax: (518) 431-8784
E-mail*: RFP@nystrs.org

***Please do not add this email address to your mailing lists. Any emails sent to this mailbox that are not directly related to the RFP will be automatically deleted.**

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 document, 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 24-45.**"

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").

The Designated Contact does not typically acknowledge receipt of Bidder inquiries. Bidders are encouraged to use "read" and/or "deliver" receipts for confirmation.

7. 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.

8. 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. NYSTRS encourages all segments of the business community to participate in its procurement opportunities. Please visit 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. Additionally, MWSDVBE status may be used to break a tie with respect to price and/or evaluation scoring. Please see Section 18 (Equivalent or Identical Bids) of Appendix B to this RFP.

9. 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.

10. 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.

11. 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.*

12. STANDARD CLAUSES FOR NYS CONTRACTS AND GENERAL INFORMATION

"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 any resulting contract(s).

13. MANDATORY REQUIREMENTS

Experience and qualifications of individual consultant at a minimum should include:

- 13.1. Consulting work with at least three similar organizations within the last five (5) years where substantially similar work was provided.
- 13.2. Consulting work with at least two organizations that are within the public sector industry.
- 13.3. Consulting work as the sole/primary consultant on the project working with a Board of Trustees.
- 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, attached hereto and incorporated, 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. SCOPE OF CONTRACT

- 14.1. NYSTRS Board is seeking proposals from qualified and experienced consultants with expertise in delivering succession planning framework and related consulting services. This initiative pertains to the Executive Director

& Chief Investment Officer (ED/CIO) role. Due to the size of the System, complexity of business lines, and the critical functions of the position, the best way to ensure a smooth and successful transition is to anticipate and plan for it. We seek a consultant who can deliver a comprehensive succession plan for this position.

- 14.2. We seek a consultant to analyze the market for executives with experience in the management of complex organizations in our business lines of member services and asset management; provide an overview of organizational structures that the Board may wish to consider, and be a resource for Board education sessions on succession planning.

15. SERVICES REQUIRED

Succession Plan/Framework to include the following components:

- 15.1. Review of current organization structure and provide written recommendations based on industry research and provide guidance through potential structural changes.
- 15.2. Conduct individual and group conversations with Board members to identify requirements for successor. Develop a potential candidate profile(s) for succession planning purposes.
- 15.3. Provide guidance regarding best practices on identifying candidates from internal and external pools.
- 15.4. Recommend tools and resources for hiring process of successor.

16. PROPOSAL SUBMISSION REQUIREMENTS

- 16.1. 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.**
- 16.2. A Proposal Checklist is located on page ten (10), to assist Bidders in compilation of proposals.
- 16.3. All sealed bids must be received by the Designated Contact (refer to Section 4) by **11:00 am (ET) on 4/19/2024.**
- 16.4. Faxed or emailed bids will not be accepted.
- 16.5. Late proposals may not be considered. Bidders assume all risks for timely, properly submitted bid deliveries, and are encouraged to submit proposals prior to the due date/time.
- 16.6. The shipping envelope must be clearly labeled with the notation "**Proposal for RFP 24-45.**" Failure to properly label the bid package may necessitate the premature opening of the bid and may compromise confidentiality.
- 16.7. to avoid premature opening of the bid package, potentially compromising confidentiality.
- 16.8. Bidders shall mail one (1) CD/DVD or USB/flash drive containing all the required information. Please provide the following documents, using the noted naming convention:
- Technical proposal (i.e., transmittal letter and Exhibits 1-4): [Bidder Name]_Technical_RFP_24-45
 - Cost proposal (Exhibit 5): [Bidder Name]_Cost_RFP_24-45
- 16.9. **No references to costs shall be included in the technical proposal.**
- 16.10. To facilitate requests for information under the Freedom of Information Law, the file(s) security settings must allow for redaction of trade secret/proprietary information. Refer to Exhibit 1, section "Freedom of Information Law" for additional information.
- 16.11. **The Designated Contact will not respond to inquiries regarding receipt of bids.** Bidders are encouraged to send proposals using mail/courier with tracking capabilities.

- 16.12. Failure to utilize the forms provided or follow the format described herein may result in rejection of your bid.
- 16.13. 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.

17. PROPOSAL FORMAT AND CONTENT

Provide the following information in the order requested and using the forms provided, where applicable.

17.1. Transmittal Letter/Executive Summary

17.2. Response Template (Exhibit 1)

17.3. Vendor Responsibility Questionnaire (Exhibit 2)

17.4. Technology Questionnaire (Exhibit 3)

NYSTRS is interested in understanding the technology and related security of the software tools/systems that may store NYSTRS' data. Bidders must complete the attached Technology Questionnaire (Exhibit 3) 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.

17.5. Conflict of Interest Disclosure (Exhibit 4)

17.6. Legal Authority.

Bidders shall provide proof of its authority to conduct business in NYS. If the bidder is not registered with the NYS Department of State, Division of Corporations, then the bidder shall provide one of the following forms of documentation to satisfy this requirement:

- 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.

17.7. Cost Proposal (Exhibit 5)

Pricing Bid price must include all direct and indirect costs, including, but not limited to, travel and miscellaneous expenses, as these, meals, lodging, direct labor costs will not be reimbursed by NYSTRS, 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.

18. EVALUATION OVERVIEW

18.1. 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.

19. 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.

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

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

- 19.1. Each member of the Evaluation Committee (the "Committee") shall independently review and score each Bidder's technical proposal.
- 19.2. The technical scores of each Committee member shall be averaged to develop a preliminary technical score.
- 19.3. One or more of the top-scored candidates will be deemed "finalists" and will be required to provide a presentation for the Committee. Selection of finalists may be based solely on the technical scores.
- 19.4. The Committee may revise scores based on the information and clarifications provided during the presentation. Revised technical scores shall be averaged to develop a revised technical score.
- 19.5. Cost scores will be independently developed, in accordance with section 20.2.
- 19.6. Technical and cost scores shall be combined to produce a total score.
- 19.7. The Bidder with the highest total score shall be recommended for contract award.

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.

20. EVALUATION CRITERIA AND WEIGHTING

20.1. Technical scores are worth 80%, and are comprised of:

- Firm Experience
- Experience, skills, and qualifications
- Project Understanding
- Project Management
- References

20.2. Cost scores are worth 20%.

The total cost of services to be provided will be ranked relative to other proposals received. The proposal having the lowest total cost 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.

20.3. Administrative Burden (Pass/Fail)

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").

20.4. 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.

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
- No references to fees/costs are contained 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 included as a **separate attachment**.

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, licenser, licensee, lessor, 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 Department of Economic Development Division for
Small Business
Albany, New York 12245 Telephone: 518-
292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development 633 Third
Avenue
New York, NY 10017 212-
803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

A list of certified NYS Service Disabled Veteran-Owned Businesses 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
email: VeteransDevelopment@ogs.ny.gov
http://ogs.ny.gov/core/docs/CertifiedNYS_SDVOB.pdf

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.

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 for such project, then the following 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. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(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.
 - cc. 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.
 - ee. 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.
 - gg. Perform background checks for any person assigned to the engagement.
 - hh. Consider amendments which are not specifically covered by the terms of the contract but are judged to be in the best interests of NYSTRS.
- 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 as 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"), 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"):

Succession planning frameworks, public pension fund executive level market analysis, and related consulting services, as set forth in the specification of Request for Proposal (RFP) 24-45, 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 required 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 (NYSTRS' Insurance Requirements);
- D. Attachment 4 (fees)
- E. Attachment 1 (RFP 21-11);
- F. Attachment 2 (Contractor's proposal), excluding any sample agreement(s) or other legal terms and conditions which shall not be binding up on 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.

The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party, and that ambiguities shall not be interpreted against the drafting party.

5. *Effective Date; Counterparts*

The Agreement shall not be effective until signed and delivered by both Contractor and NYSTRS. An electronic, digital or electronically transmitted signature will be deemed an acceptable original. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts, 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 employee, subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel 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. The 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 of any of its liabilities or other obligations under this Agreement. NYSTRS reserves the right to reject or bar from NYSTRS' facility for cause any employees, subcontractors, or agents of the Contractor.

8. *Contractor Personnel*

Contractor shall assign experienced personnel to supervise 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.

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.

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 one year, commencing on _____ and ending on _____ ("Initial Term"). This contract may be renewed for up to four (4) successive one-year terms, or other such period as the parties may agree to (a "Renewal"), upon mutual written consent.

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 reimburse NYSTRS for its costs to re-procure the services; (ii) 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 (iii) in addition to clauses (i) and (ii) 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.

12. 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.

Subject to the terms and conditions of this 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). All 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.

13. 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.

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. 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 said 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 15 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. *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:

- A. personal injury or death;
- B. damage to or destruction of real or personal tangible or intangible property;
- C. 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;
- D. negligence, fraud, or misconduct;
- E. unauthorized use, disclosure, access, or acquisition (whether on its own or through a third-party) of NYSTRS Confidential Information;
- F. breach by Contractor (whether on its own or through a third-party) of its obligations under the Agreement;
- G. claim for damages arising out of any act or omission on the part of Contractor, its employees, agents or subcontractors for 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 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.

17. Limitation of Liability

Except for indemnification obligations, which shall be without limitation, the limit of liability shall be as follows:

- A. Contractor's liability for any claim, loss or liability arising out of, or connected with the Services, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the amounts specified in the Agreement, or (ii) five hundred thousand dollars (\$500,000), whichever is greater.
- B. NYSTRS may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against NYSTRS unless Contractor at the time of the presentation of claim shall demonstrate to NYSTRS' satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- C. Notwithstanding the above, 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 or loss of profit by NYSTRS, the Contractor, or by others. Contractor shall not be entitled to, and hereby waives, any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

18. 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.

19. 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. Reimbursement of Costs Incurred.** In the event of Contractor's material, uncured breach, Contractor agrees to reimburse NYSTRS promptly for 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.

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. Non-Infringement.** 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. Contractor shall indemnify NYSTRS for any infringement or misappropriation set forth or contemplated herein as provided for in Section 16, Indemnification, of this Agreement

If any service or deliverable does not conform to the covenant set forth in this paragraph, 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.

- C. 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.

- D. 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.
- E. Actions/Proceedings.** To Contractor's knowledge there are no actions, proceedings or investigations pending or threatened against Contractor or its parent company, that it would reasonably expect to have any material effect on Contractor's ability to perform its obligations pursuant to the Agreement.

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' Contactor 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 Confidential 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 mail or a reputable overnight delivery service with tracking capabilities within two (2) business days 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 all 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, 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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)** 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.
- (2)** Commercial General Liability at limits of \$1,000,000 per occurrence/\$2,000,000 General Aggregate limit. The policy shall be written on an occurrence basis with no deductible. Policy shall be endorsed to name NYSTRS as "additional insured". Definition of Additional Insured shall include all partners, officers, directors, employees, agents and representatives of the named entity. Further, coverage for "additional insured" shall apply on a primary basis irrespective of any other insurance, whether collectible or not.
- (3)** Professional and Cyber Liability Insurance at not less than a \$5,000,000 limit providing coverage for damages arising out of wrongful acts, errors, and/or omissions of Contractor. Cyber Liability insurance will provide third party liability coverage and include Privacy Breach and Response Services. If coverage is terminated after the expiration of the agreement, an extended reporting period will be purchased for a minimum of two (2) years.
- (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 above. This policy shall be written on an "occurrence" basis and shall include "additional insured" coverage for same parties indicated in paragraph (2) above. Further, coverage for "additional insureds" shall apply on a primary and non-contributory basis irrespective of any other insurance whether collectible or not.
- (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 in favor of NYSTRS and indemnified parties and additional insureds.
- (7)** 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.

(8) 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.

(9) INDEMNIFICATION/HOLD HARMLESS

Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold owner, its partners, directors, officers, employees, servants, representatives and agents harmless from and against any and all claims, loss (including attorneys' fees, witnesses' fees and all court costs), damages, expense and liability (including statutory liability), resulting from injury and/or death of any person or damage to or loss of any property arising out of any negligent or wrongful act, error or omission or breach of contract, in connection with the operations of the Contractor or its subcontractors. The foregoing indemnity shall include injury or death of any employee of the Contractor or subcontractor and shall not be limited in any way by an amount or type of damages, compensation or benefits payable under any applicable Workers Compensation, Disability Benefits or other similar employee benefits acts.

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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Bidder Certifications

By signing below, bidder agrees as follows:

- ✓ 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.
- ✓ Bidder has reviewed Appendices A-F.
- ✓ Bidder has reviewed any and all addenda/amendments issued.
- ✓ This proposal is a firm and irrevocable offer good for 180 days from the bid due date.
- ✓ Bidder agrees to all the terms, conditions and provisions of this RFP governing the procurement process. **Any exception(s) to these terms and conditions must be explicitly stated in the space provided on the next page.**

(Signature)

(Date)

(Print Name)

(Title)

Exceptions

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).

Bidder’s Exceptions.

If bidder does not have any exceptions, indicate “none” in the space below.

RFP section, page	Language to which bidder takes exception	Explanation/Proposed Replacement Language

Freedom of Information Law ("FOIL")

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. For example:

Location in Proposal (page, section/paragraph)	Statutory Basis for Confidentiality	Description/Explanation

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.

In accordance with State Finance Law § 139-l paragraph 3, failure to comply may result in disqualification of the bid.

- 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.

Technical Proposal

Please answer the following questions. If necessary, include separate attachments for responses to those questions where graphics, or longer responses, would provide greater clarity.

1. Mandatory Requirements

The bidder must specifically address how it meets the requirement noted in Section 13 (Mandatory Requirements) of the RFP. The bidder must be as specific as possible in describing how it meets the Mandatory Requirement(s). For items 13.4-13.7, stating "Bidder understands and will comply" is an acceptable response.

2. Experience/Background

- 2.1. Provide a narrative description of the company's history, purpose, range of services, resources, and past and current business activities. In the latter area, describe in detail the company's experience in succession planning. Describe any special capabilities of the company, such as resources, programs or practices that set it apart from other firms.
- 2.2. Provide a staffing plan for the proposed services. Detail the employees' qualifications and relevant experience of personnel to be assigned to the proposed team.
- 2.3. Provide an in-depth detail to the understanding of the Proposal, to indicate the understanding of the scope, size, and complexity of Deliverables.
- 2.4. Provide the proposed schedule for delivery of the Deliverables, management of the work, delegation of responsibility, work plans, cost control, reporting and quality control, and subcontracting arrangements.

3. Subcontracting

Please list any subcontractors that you plan to utilize. Describe the scope of work and role(s) they will perform.

4. References

Please provide three (3) references where a succession plan has been implemented with a scope and size similar as this proposed project within the past five (5) years. If you intend to use any subcontractors, please include at least two (2) references for each subcontractor. Include the following information for each reference:

- Reference Firm Name
- Contact Person
- Telephone Number
- E-mail Address

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			
Legal Business Entity Name		EIN	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity Type</u> – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u>)		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company</u> (<u>LLC</u> or <u>PLLC</u>)		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u>)		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If 'No,' indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States State _____			
<input type="checkbox"/> Other Country _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," Enter <u>DUNS</u> Number			
1.4 If the <u>Legal Business Entity's</u> <u>Principal Place of Business</u> is not in New York State, does the <u>Legal Business Entity</u> maintain an office in New York State? (Select "N/A," if <u>Principal Place of Business</u> is in New York State.)			<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If "Yes," provide the address and telephone number for one office located in New York State.			

<p>1.5 Is the <u>Legal Business Entity</u> a New York State certified <u>Minority-Owned Business Enterprise</u> (MBE), <u>Women-Owned Business Enterprise</u> (WBE), <u>New York State Small Business</u> (SB) or a federally certified <u>Disadvantaged Business Enterprise</u> (DBE)?</p> <p>If “Yes,” check all that apply:</p> <p><input type="checkbox"/> New York State certified <u>Minority-Owned Business Enterprise</u> (MBE)</p> <p><input type="checkbox"/> New York State certified <u>Women-Owned Business Enterprise</u> (WBE)</p> <p><input type="checkbox"/> <u>New York State Small Business</u> (SB)</p> <p><input type="checkbox"/> Federally certified <u>Disadvantaged Business Enterprise</u> (DBE)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
--	---

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.

Name	Title	Percentage Ownership (Enter 0% if not applicable)

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 <u>Primary Place of Business</u> (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? Yes No

If “Yes,” enter DUNS Number

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.

Name	Title

II. REPORTING ENTITY INFORMATION

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 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” explain:	

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the reporting entity:

4.0 Been <u>suspended</u> or <u>debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a low bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

IV. INTEGRITY – CONTRACT BIDDING

Within the past five (5) years, has the reporting entity:

For each “Yes,” explain:

V. INTEGRITY – CONTRACT AWARD

Within the past five (5) years, has the reporting entity:

5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

VI. CERTIFICATIONS/LICENSES

Within the past five (5) years, has the reporting entity:

6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No

For each “Yes,” explain:

VII. LEGAL PROCEEDINGS

Within the past five (5) years, has the reporting entity:

7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious or willful</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No

VII. LEGAL PROCEEDINGS

Within the past five (5) years, has the reporting entity:

For each "Yes," explain:

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the <u>government entity</u> 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.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	
8.2 Within the past five (5) years, have any <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> 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.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY

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.)

<p>9.0 Does the <u>Reporting Entity</u> have any <u>Associated Entities</u>?</p> <p>Note: All questions in this section must be answered if the <u>Reporting Entity</u> is either:</p> <ul style="list-style-type: none"> – An <u>Organizational Unit</u>; or – The entire <u>Legal Business Entity</u> which controls, or is controlled by, any other entity(ies). <p>If “No,” SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>9.1 Within the past five (5) years, has any <u>Associated Entity Official</u> or <u>Principal Owner</u> been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for:</p> <ul style="list-style-type: none"> a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness? 	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>If “Yes,” provide an explanation of the issue(s), the individual involved, his/her title and role in the <u>Associated Entity</u>, his/her relationship to the <u>Reporting Entity</u>, relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s).</p>	
<p>9.2 Does any <u>Associated Entity</u> have any currently undischarged <u>federal</u>, New York State, New York City or New York local government <u>liens</u> or <u>judgments</u> (not including UCC filings) over \$50,000?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>If “Yes,” provide an explanation of the issue(s), identify the <u>Associated Entity</u>’s name(s), <u>EIN(s)</u>, primary business activity, relationship to the <u>Reporting Entity</u>, relevant dates, the Lien holder or Claimant’s name(s), the amount of the <u>lien(s)</u> and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.</p>	
<p>9.3 Within the past five (5) years, has any <u>Associated Entity</u>:</p>	
<p>a) Been <u>disqualified</u>, <u>suspended</u> or <u>debarred</u> from any <u>federal</u>, New York State, New York City or other New York local <u>government contracting process</u>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>b) Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>c) Been <u>suspended</u>, <u>cancelled</u> or <u>terminated for cause</u> (including for <u>non-responsibility</u>) on any <u>federal</u>, New York State, New York City or New York local <u>government contract</u>?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>d) Been the subject of an <u>investigation</u>, whether open or closed, by any <u>federal</u>, New York State, New York City, or New York local <u>government entity</u> for a civil or criminal violation with a penalty in excess of \$500,000?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>e) Been the subject of an indictment, grant of immunity, <u>judgment</u>, or conviction (including entering into a plea bargain) for conduct constituting a crime?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

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.)

f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>federal</u> , New York State, New York City, or New York local <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

Name	Telephone	Ext.	Fax
Title	Email		

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

Vendor Name	
Contact	
Email	
Phone Number	

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Application & Interface Security				
Application Security	AIS-01.2	Do you use an automated source code analysis tool to detect security defects in code prior to production?		
	AIS-01.5	(SaaS only) Do you review your applications for security vulnerabilities and address any issues prior to deployment to production?		
Customer Access Requirements	AIS-02.1	Are all identified security, contractual, and regulatory requirements for customer access contractually addressed and remediated prior to granting customers access to data, assets, and information systems?		
Data Integrity	AIS-03.1	Does your data management policies and procedures require audits to verify data input and output integrity routines?		
Audit Assurance & Compliance				
Independent Audits	AAC-02.1	Do you allow tenants to view your SOC2/ISO 27001 or similar third-party audit or certification reports?		
	AAC-02.2	Do you conduct network penetration tests of your cloud service infrastructure at least annually?		
	AAC-02.3	Do you conduct application penetration tests of your cloud infrastructure regularly as prescribed by industry best practices and guidance?		
Information System Regulatory Mapping	AAC-03.1	Do you have a program in place that includes the ability to monitor changes to the regulatory requirements in relevant jurisdictions, adjust your security program for changes to legal requirements, and ensure compliance with relevant regulatory requirements?		
Business Continuity Management & Operational Resilience				
Business Continuity Testing	BCR-02.1	Are business continuity plans subject to testing at planned intervals or upon significant organizational or environmental changes to ensure continuing effectiveness?		
Policy	BCR-10.1	Are policies and procedures established and made available for all personnel to adequately support services operations' roles?		
	BCR-11.1	Do you have technical capabilities to enforce tenant data retention policies?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Retention Policy	BCR-11.3	Have you implemented backup or recovery mechanisms to ensure compliance with regulatory, statutory, contractual or business requirements?		
	BCR-11.7	Do you test your backup or redundancy mechanisms at least annually?		
Change Control & Configuration Management				
Unauthorized Software Installations	CCC-04.1	Do you have controls in place to restrict and monitor the installation of unauthorized software onto your systems?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Data Security & Information Lifecycle Management				
E-commerce Transactions	DSI-03.1	Do you provide standardized (e.g. ISO/ IEC) non-proprietary encryption algorithms(3DES, AES, etc.) to tenants in order for them to protect their data if it is required to move through public networks (e.g., the Internet)?		
	DSI-03.2	Do you utilize open encryption methodologies any time your infrastructure components need to communicate with each other via public networks (e.g., Internet-based replication of data from one environment to another)?		
Nonproduction Data	DSI-05.1	Do you have procedures in place to ensure production data shall not be replicated or used in non-production environments?		
Secure Disposal	DSI-07.1	Do you support the secure deletion (e.g., degaussing/cryptographic wiping) of archived and backed-up data?		
	DSI-07.2	Can you provide a published procedure for exiting the service arrangement, including assurance to sanitize all computing resources of tenant data once a customer has exited your environment or has vacated a resource?		
Datacenter Security				
Asset Management	DCS-01.2	Do you maintain a complete inventory of all of your critical assets located at all sites/ or geographical locations and their assigned ownership?		
Controlled Access Points	DCS-02.1	Are physical security perimeters (e.g., fences, walls, barriers, guards, gates, electronic surveillance, physical authentication mechanisms, reception desks, and security patrols) implemented for all areas housing sensitive data and information systems?		
User Access	DCS-09.1	Do you restrict physical access to information assets and functions by users and support personnel?		
Encryption & Key Management				
Key Generation	EKM-02.1	Do you have a capability to allow creation of unique encryption keys per tenant?		
Encryption	EKM-03.1	Do you encrypt tenant data at rest (on		
		disk/storage) within your environment?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Governance and Risk Management				
Baseline Requirements	GRM-01.1	Do you have documented information security baselines for every component of your infrastructure (e.g., hypervisors, operating systems, routers, DNS servers, etc.)?		
Policy	GRM-06.1	Are your information security policies and procedures made available to all impacted personnel and business partners, authorized by accountable		
		business role/function and supported by the information security management program as per industry best practices (e.g. ISO 27001, SOC 2)?		
Policy Enforcement	GRM-07.1	Is a formal disciplinary or sanction policy established for employees who have violated security policies and procedures?		
Policy Reviews	GRM-09.1	Do you notify your tenants when you make material changes to your information security and/or privacy policies?		
	GRM-09.2	Do you perform, at minimum, annual reviews to your privacy and security policies?		
Human Resources				
Asset Returns	HRS-01.1	Upon termination of contract or business relationship, are employees and business partners adequately informed of their obligations for returning organizationally-owned assets?		
Background Screening	HRS-02.1	Pursuant to local laws, regulations, ethics, and contractual constraints, are all employment candidates, contractors, and involved third parties subject to background verification?		
Employment Agreements	HRS-03.1	Do your employment agreements incorporate provisions and/or terms in adherence to established information governance and security policies?		
Employment Termination	HRS-04.1	Are documented policies, procedures, and guidelines in place to govern change in employment and/or termination?		
Training / Awareness	HRS-09.5	Are personnel trained and provided with awareness programs at least once a year?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Identity & Access Management				
Audit Tools Access	IAM-01.1	Do you restrict, log, and monitor access to your information security management systems (e.g., hypervisors, firewalls, vulnerability scanners, network sniffers, APIs, etc.)?		
	IAM-01.2	Do you monitor and log privileged access (e.g., administrator level) to information security management systems?		
User Access Policy	IAM-02.1	Do you have controls in place ensuring timely removal of systems access that is no longer required for business purposes?		
Policies and Procedures	IAM-04.1	Do you manage and store the identity of all personnel who have access to the IT infrastructure, including their level of access?		
Source Code Access Restriction	IAM-06.1	Are controls in place to prevent unauthorized access to your application, program, or object source code, and assure it is restricted to authorized personnel only?		
	IAM-06.2	Are controls in place to prevent unauthorized access to tenant application, program, or object source code, and assure it is restricted to authorized personnel only?		
User Access Restriction / Authorization	IAM-08.1	Do you document how you grant, approve and enforce access restrictions to tenant/customer credentials following the rules of least privilege?		
User Access Reviews	IAM-10.1	Do you require a periodical authorization and validation (e.g. at least annually) of the entitlements for all system users and administrators (exclusive of users maintained by your tenants), based on the rule of least privilege, by business leadership or other accountable business role or function?		
User Access Revocation	IAM-11.1	Is timely deprovisioning, revocation, or modification of user access to the organizations systems, information assets, and data implemented upon any change in status of employees, contractors, customers, business partners, or involved third parties?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Infrastructure & Virtualization Security				
Audit Logging / Intrusion Detection	IVS-01.1	Are file integrity (host) and network intrusion detection (IDS) tools implemented to help facilitate timely detection, investigation by root cause analysis, and response to incidents?		
	IVS-01.2	Is physical and logical user access to audit logs restricted to authorized personnel?		
	IVS-01.5	Are audit logs reviewed on a regular basis for security events (e.g., with automated tools)?		
Clock Synchronization	IVS-03.1	Do you use a synchronized time-service protocol (e.g., NTP) to ensure all systems have a common time reference?		
OS Hardening and Base Controls	IVS-07.1	Are operating systems hardened to provide only the necessary ports, protocols, and services to meet business needs using technical controls (e.g., antivirus, file integrity monitoring, and logging) as part of their baseline build standard or template?		
Production / Non-Production Environments	IVS-08.1	For your SaaS or PaaS offering, do you provide tenants with separate environments for production and test processes?		
	IVS-08.3	Do you logically and physically segregate production and non-production environments?		
Segmentation	IVS-09.1	Are system and network environments protected by a firewall or virtual firewall to ensure business and customer security requirements?		
VMM Security-Hypervisor Hardening	IVS-11.1	Do you restrict personnel access to all hypervisor management functions or administrative consoles for systemshosting virtualized systems based on the principle of least privilege and supported through technical controls (e.g., two-factor authentication, audit trails, IP address filtering, firewalls and TLS-encapsulated communications to the administrative consoles)?		
Wireless Security	IVS-12.1	Are policies and procedures established and mechanisms configured and implemented to protect the wireless network environment perimeter and to restrict unauthorized wireless traffic?		
	IVS-12.2	Are policies and procedures established and mechanisms implemented to ensure wireless security settings are enabled with strong encryption for authentication and transmission, replacing vendor default settings (e.g., encryption keys, passwords, SNMP community strings)?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Wireless Security	IVS-12.3	Are policies and procedures established and mechanisms implemented to protect wireless network environments and detect the presence of unauthorized (rogue) network devices for a timely disconnect from the network?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Interoperability & Portability				
APIs	IPY-01.1	Do you publish a list of all APIs available in the service and indicate which are standard and which are customized?		
Mobile Security				
Approved Applications	MOS-03.1	Do you have a policy enforcement capability (e.g., XACML) to ensure that only approved applications and those from approved application stores can be loaded onto a mobile device?		
Security Incident Management, E-Discovery, & Cloud Forensics				
Incident Management	SEF-02.1	Do you have a documented security incident response plan?		
	SEF-02.4	Have you tested your security incident response plans in the last year?		
Incident Reporting	SEF-03.1	Are workforce personnel and external business relationships adequately informed of their responsibility, and, if required, consent and/or contractually required to report all information security events in a timely manner?		
	SEF-03.2	Do you have predefined communication channels for workforce personnel and external business partners to report incidents in a timely manner adhering to applicable legal, statutory, or regulatory compliance obligations?		
Incident Response Legal Preparation	SEF-04.4	Do you enforce and attest to tenant data separation when producing data in response to legal subpoenas?		
Supply Chain Management, Transparency, and Accountability				
Incident Reporting	STA-02.1	Do you make security incident information available to all affected customers and providers periodically through electronic methods (e.g., portals)?		
Network / Infrastructure Services	STA-03.1	Do you collect capacity and use data for all relevant components of your cloud service offering?		
Third Party Agreements	STA-05.4	Do third-party agreements include provision for the security and protection of information and assets?		
	STA-05.5	Do you have the capability to recover data for a specific customer in the case of a failure or data loss?		
Supply Chain Metrics	STA-07.4	Do you provide tenants with ongoing visibility and reporting of your operational Service Level Agreement (SLA) performance?		
Third Party Audits	STA-09.1	Do you mandate annual information security reviews and audits of your third party providers to ensure that all agreed upon security requirements are met?		

Control Heading	Original ID	Question Text	Answer	Notes/Comments
Threat and Vulnerability Management				
Antivirus / Malicious Software	TVM-01.1	Do you have anti-malware programs that support or connect to your cloud service offerings installed on all of your IT infrastructure network and systems components?		
Vulnerability / Patch Management	TVM-02.5	Do you have a capability to patch vulnerabilities across all of your computing devices, applications, and systems?		
Mobile Code	TVM-03.1	Is mobile code authorized before its installation and use, and the code configuration checked, to ensure that the authorized mobile code operates according to a clearly defined security policy?		
Additional Topics				
Software Components		What packages or software components are bundled with or used as part of your product?		
Single Sign-On		Does your product support Single Sign-On (SSO)? If so, is there any additional cost or licensing associated with SSO usage?		
Vulnerability Management SLAs		When vulnerabilities are discovered, what are the timeframes under which they are addressed by your organization? Please respond with your SLA for remediation of Critical, High, Moderate, and Low severity vulnerabilities.		
Cloud Architecture		Please describe your cloud architecture.		
Availability		Please identify the regions in which your cloud instances reside. In which specific regions would NYSTRS' data and/or services reside?		
Capacity Testing		Does your BC/DR plan include capacity planning and testing to verify that all services will run outside of the primary region?		

The successful proposer 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).

Conflict Threat	No	Yes (Explain Below)
1. <u>Self-interest threat</u> The threat that a financial or other interest will inappropriately influence a consultant’s judgment or behavior or the behavior of NYSTRS personnel.	<input type="checkbox"/>	<input type="checkbox"/>
2. <u>Self-review threat</u> The threat that a consultant that has provided services will not appropriately evaluate the results of previous judgments made or services performed as part of the services when forming a judgment significant to an assessment.	<input type="checkbox"/>	<input type="checkbox"/>
3. <u>Bias threat</u> The threat that a consultant will, as a result of political, ideological, social, or other convictions, take a position that is not objective.	<input type="checkbox"/>	<input type="checkbox"/>
4. <u>Familiarity threat</u> The threat that aspects of a relationship with management or personnel of NYSTRS, such as a close or long relationship, or that of an immediate or close family member, will lead a consultant to take a position that is not objective.	<input type="checkbox"/>	<input type="checkbox"/>
5. <u>Undue influence threat</u> The threat that external influences or pressures will impact a consultant’s ability to make independent and objective judgments and recommendations.	<input type="checkbox"/>	<input type="checkbox"/>
6. <u>Management participation threat</u> The threat that results from a consultant taking on the role of management or otherwise performing management functions on behalf of the entity undergoing an assessment.	<input type="checkbox"/>	<input type="checkbox"/>
Explanation:		

Bidder	_____	Contact	_____
DBA, if any	_____	Email Address	_____
Address	_____	Telephone #	_____
	_____	Bid #	<u>24-45</u>

Bidder shall provide an hourly rate that includes overhead, profit, travel expenses, clerical support, equipment, materials, supplies, managerial/administrative support, preparation of documents, reports, forms, reproduction, and any other costs necessary for the provision of services, as these will not be reimbursed by NYSTRS.

NYSTRS will only pay for actual hours worked/performed. Services are to be billed monthly in arrears. NYSTRS will pay any undisputed amounts within 30 days of receipt of the invoice. All invoices must be sent to AP@nystrs.org.

Contract Period	Hourly Rate
<u>Year 1 (2024-25)</u>	<u>\$ _____</u>
<u>Year 2 (2025-26)</u>	<u>\$ _____</u>
<u>Year 3 (2026-27)</u>	<u>\$ _____</u>
<u>Year 4 (2027-28)</u>	<u>\$ _____</u>
<u>Year 5 (2028-29)</u>	<u>\$ _____</u>