

Request for Proposal

Assessment of Web Application Security

AUGUST 2023



SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO
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I. INTRODUCTION

The School Employees Retirement System of Ohio (SERS) is requesting proposals from vendors for assessing the security of software applications within its line-of-business solution.

II. BACKGROUND

SERS is a statewide defined benefit retirement system for non-certificated persons employed by the public schools within the state's cities, villages and counties, as well as local districts, vocational and technical schools, community colleges, and The University of Akron. SERS provides service retirement, disability and survivor benefits, and access to health care coverage for benefit recipients and their dependents. General administration and management of the plan is vested in the Retirement Board established under [Chapter 3309](#) of the Ohio Revised Code.

General information about SERS can be found at www.ohsers.org.

SERS is a mid-sized organization employing approximately 180 people. SERS recently upgraded its line-of-business solution that brought to bare numerous improvements including support for mobile devices. SERS is also in the process of migrating to a new SaaS provider for identity management of our member self-service and employer portals.

This is a white box assessment. At a minimum, SERS will provide the following information to the selected vendor:

- Detailed results of an environmental security assessment including vulnerability information for the infrastructure supporting the solution
- All system documentation related to the solution and underlying infrastructure
- Results of both static (SAST) and dynamic (DAST) application vulnerability scans

The vendor may request additional information from SERS relevant to this assessment.

III. SCOPE OF SERVICES

SERS is seeking the services of a vendor for assessing the security of the software applications and proper configuration of our customer identity management solution. SERS anticipates this project to last multiple days. The aim of this assessment is to determine whether vulnerabilities in software applications or individuals can be exploited and expose SERS to real risks. Any proposal that includes automated techniques as the only method of testing will not be considered. The vendor shall perform external testing to simulate real

world scenarios use by a threat actor. The vendor shall perform social engineering testing of key individuals within our organization.

The minimum services to be provided by the vendor are outlined below. The vendor may propose additional related or more in-depth services in its answer to question B.9 in Appendix A.

A. Industry-Best Standards

1. Use one or more industry-best standards for assessing the software applications and infrastructure such as the Open Web Application Security Project's (OWASP's) application security verification and testing frameworks, National Institute of Security and Technology SP800-115, or similar methodology.

B. Available Information and Requirements

1. Incorporate any information available from SERS that is pertinent to the software applications in the line-of-business solution and its environment.
2. Consider the results of recent SAST and DAST application vulnerability scans.
3. Review and validate software application security requirements with SERS' project team and revise as needed.
4. SERS will provide names of key individuals for social engineering.

C. Security Testing Guidelines and Procedures

1. Develop and document security testing guidelines and procedures in accordance with the adopted industry-best standard(s).
2. Relate the guidelines and procedures to specific industry-best standards.
3. Include security test cases within the testing guidelines and procedures.
4. Ensure that these test cases examine the controls that provide security at different layers.
5. Review security testing guidelines and procedures including test cases with SERS, and revise as needed.

D. Security Testing

1. Follow agreed-upon security testing guidelines and procedures.
2. Gather information regarding the software applications' logic, structure, framework, components, and architecture; access points; hosting platforms; and directly and indirectly exposed elements.
3. Methodically validate and verify the effectiveness of application security controls using application penetration testing.

- a. Test the configuration of the servers hosting the web applications.
- b. Test functions that manage user roles, registrations, and authorizations to access the applications.
- c. Test authentication functions that verify the digital identity of the sender of a communication.
- d. Test the authorization process after a user is authenticated.
- e. Test the set of all controls governing the interaction between a user and the software applications.
- f. Test all possible forms of input coming from the client or the environment.
- g. Analyze error codes and stack traces.
- h. Test the security of data while in storage and transmittal over the network.
- i. Test for flaws in the business logic of the software applications.
- j. Test for the execution of code on the client-side.
- k. Verify that an unauthorized user without proper credentials cannot gain access to SERS' member data.
- l. Verify that an authorized or unauthorized user cannot gain access to the software applications through the web front-end and modify other member or employer data.
- m. Verify that an authorized or unauthorized user cannot gain access to the software applications through the web front-end and bulk extract SERS' member or employer data from the back end database.

E. Security Testing Results

1. For each vulnerability found, provide the following data:
 - a. Categorization by type of vulnerability.
 - b. Security threat to which the issue is exposed.
 - c. Root cause of vulnerability.
 - d. Severity of vulnerability (high, medium, low).
 - e. Remediation of vulnerability with sufficient detail to allow a fix to be made.
 - f. Tools used and steps followed to produce the vulnerability in case we need to share with our software vendor.

F. Security Risk Analysis

1. Measure the total number of vulnerabilities found with security tests by type.
2. Identify the risk (high, medium, low) of each identified vulnerability in terms of likelihood of occurrence and impact of occurrence.
3. Prioritize the risks using high, medium, and low.
4. Provide specific strategies to manage (accept, mitigate, or transfer) identified risks and estimate the level of effort (high, medium, low) to reduce the risk to an acceptable level.

G. Assessment Report and Presentation

1. Provide a written report including:
 - a. Assumptions, methodology, findings, and recommendations of the assessment.
 - b. Executive Summary.
 - c. Detailed supporting information.
2. At SERS' request, make a presentation of assessment findings and recommendations to SERS' leadership team (approximately one (1) hour).

The target date for completing the project is **October 5, 2023**. Provide a detailed timetable which includes a start date, key project milestones, and resource needs from SERS personnel.

The selected vendor may be asked to perform similar services on future software application security assessments.

SERS will only consider proposals for the services as described above. Responses submitted for services other than those specified or allowed in Section III will not be considered.

IV. PROPOSAL SUBMISSIONS

A. Response Deadline

The completed Response must be received by **Thursday, September 7, 2023, 3:00 p.m. Eastern Daylight Time (EDT)**. Responses received after the Response deadline will not be considered.

B. Delivery

The contact for all Responses and communications is:

Enterprise Risk Management Department
School Employees Retirement System of Ohio
300 East Broad Street, Suite 100
Columbus, Ohio 43215
risk@ohsers.org

The Responses should be sent in PDF file format by email to the contact email address identified in this Section IV.B.

C. Response Documents

All of the following documents must be submitted together and in the order listed.

1. A Cover Letter submitting the vendor's Response on the vendor's letterhead signed by at least one individual who is authorized to bind the vendor contractually. This cover letter may be an electronic image contained within the PDF file.
2. The Questionnaire in Appendix A with the question and/or request duplicated in the Response before the answer or response.

D. Submitted Responses

Any Response submitted will become the property of SERS. SERS reserves the right to retain all Responses submitted, and use any information contained in a Response except as otherwise prohibited by law. **All Responses and the contents thereof will be deemed to be a public record which is open to public inspection after a vendor has been selected and contract has been executed, if any.** A vendor may include one additional copy of its Response with any proprietary trade secret information redacted and marked as such with a brief written basis as to why it believes the information is protected from disclosure. In the event that SERS receives a public records request to which, in SERS' sole discretion, any of a vendor's materials are responsive, SERS may release the vendor's redacted materials, or in the event no redacted materials are submitted, the vendor's unredacted materials without notice to the vendor. In the event any of the vendor's redactions are challenged, the vendor shall have sole responsibility to defend such redactions at its cost and expense.

SERS will not institute any legal action to defend any of vendor's redactions, but will notify the vendor of such challenges.

E. Communications with SERS

Vendors which intend to submit a Response should not contact any member of SERS Staff or members of the Retirement Board. An exception to this rule applies to vendors who currently do business with SERS, but any contact made by such vendors with persons should be limited to that business, and should not relate to this RFP.

F. Questions Relating to this RFP

All questions concerning this RFP must be sent by email to the contact identified in Section IV.B, above, by **Monday, September 4, 2023, 3:00 p.m. EDT**. Questions submitted after 3:00 p.m., September 4, 2023 or other than by email will not be considered. Responses will be sent through email by **Tuesday, September 5, 2023, 3:00 p.m. EDT**.

V. SELECTION PROCESS

SERS staff will evaluate all timely and complete Responses. SERS reserves the right to request that any Response be clarified or supplemented.

The process leading to the selection of the vendor will include the following components:

Proposals will be evaluated, based on criteria listed in Section VII below. During the evaluation process, SERS may, in its sole discretion, select any or all vendors to make oral presentations. Such presentations will provide vendors with an opportunity to answer questions regarding the vendor's proposal. If SERS requests oral presentations, not all vendors may be asked to present, and any vendors not selected to make oral presentations will be notified that they are no longer under consideration.

If SERS requests oral presentations, SERS will re-score proposals following the presentations and will make any final decision to award the contract. After final evaluation of the proposals, SERS will commence sequential negotiations on any aspects of the proposals SERS deems appropriate, beginning with the highest-scoring finalist. If SERS does not reach agreement with the highest scoring finalist, or if in the opinion of SERS negotiations with that finalist reach an impasse, SERS may decide not to award the contract or may begin negotiations with the second-highest scoring finalist. SERS may choose to continue such

Request for Proposal negotiations with subsequent finalists on the same basis until a contract is negotiated, no other finalists remain, or SERS decides not to award the contract pursuant to this RFP.

VI. TENTATIVE TIME TABLE

The following is the tentative time schedule for SERS' search for vendors to provide the requested services. All dates are subject to modification by SERS without prior notice.

RFP issued:	Friday, August 25, 2023
Question Deadline (risk@ohsers.org):	Monday, September 4, 2023, 3:00 p.m. EDT
Answers to Email Questions Issued:	Tuesday, September 5, 2023, 3:00 p.m. EDT
RFP Response Deadline:	Thursday, September 7, 2023, 3:00 p.m. EDT
Vendor Interviews (if applicable):	Friday, September 8, 2023
Vendor Selection and Notification:	Monday, September 11, 2023, 3:00 p.m. EDT
Contract Execution:	By September 18, 2023
Project Commencement:	Estimate September 25, 2023

The vendor selected must enter into a contract using SERS' master agreement (see Appendix B).

VII. CRITERIA

The following minimum criteria are **preferred**:

- Have completed four (4) successful projects involving assessments of line-of-business solution applications at mid-size or larger organizations over the past three (3) years.
- Certifications: Certified Ethical Hacker (CEH) or Offensive Security Certified Professional (OSCP). All members of the team must meet the same requirement.
- Detailed explanation of methodology and approach to handling this engagement along with timeline.
- Ethical approach to social engineering.

Additionally, SERS will review Responses considering the following factors:

- Have in-depth knowledge of industry-best standards for software application security.
- Have expertise in validating security requirements for software applications.

- Have detailed knowledge of software application security vulnerabilities, and black box and white box security testing techniques.
- Have experience and familiarity with projects of similar size, scope, and business focus to this request.
- Have individuals assigned to SERS with professional experience in software application security assessments.

The criteria for selection will include, but are not limited to, the following:

- Understanding of the project.
- Defined plan or approach for providing services.
- Availability of resources to commit to SERS.
- Stability and experience in providing the requested services.
- Stability and experience of the personnel assigned to SERS.
- Depth of knowledge, experience, and resources to provide required services.
- Positive feedback from all professional references.

VIII. QUESTIONNAIRE

Vendors must complete the Questionnaire appearing in Appendix A. Responses to the questions must repeat the question and be answered in order. Each response should be complete and clear, and of reasonable length.

IX. TERMS AND CONDITIONS

SERS makes no representations or warranties, expressed or implied, as to the accuracy or completeness of the information in the RFP and nothing contained herein is or shall be relied upon as a promise or representation, whether as to the past or the future. The RFP does not purport to contain all of the information that may be required to evaluate the RFP and any recipient hereof should conduct its own independent analysis of SERS and the data contained or referenced herein. SERS does not anticipate updating or otherwise revising the RFP. However, this RFP may be withdrawn, modified, or re-circulated at any time at the sole discretion of SERS.

SERS reserves the right, at its sole discretion and without giving reasons or notice, at any time and in any respect, to alter these procedures, to change and alter any and all criteria, to terminate discussions, to accept or reject any Response, in whole or in part, to negotiate modifications or revisions to a Response and to negotiate with any one or more respondents to the RFP.

SERS is not and will not be under any obligation to accept, review or consider any Response to the RFP, and is not and will not be under any obligation to accept the lowest offer submitted or any offer at all. SERS is not and will not be under any obligation to any recipient of, or any respondent to, the RFP except as expressly stated in any binding agreement ultimately entered into with one or more parties, either as part of this RFP process, or otherwise. Any decision to enter into a binding agreement with a respondent to this RFP is in SERS' sole discretion.

This RFP is not an offer but a request to receive a Response. SERS will consider a Response as an offer to develop an agreement based upon the contents of the Response. Respondents agree that the contents of their Responses are valid for one year from the date of submission. SERS will not be liable for any cost incurred in the preparation of a Response and will not reimburse any respondents for their submission. Expenses related to the production of a Response are the sole responsibility of the respondent.

Appendix A

QUESTIONNAIRE

Responses to the following questions must repeat the question and be answered in order. Each response must be complete and clear and the response may not exceed ½ page in length..

A. Vendor

1. Provide the vendor's name and the principal office's address, telephone number, and website.
2. Provide the name, address, telephone number, and email address of the vendor's primary contact for this proposal.
3. Describe the vendor's primary business focus.
4. Specify how many years the vendor has been in business.
5. Describe the vendor's relevant qualifications and experience.
6. Describe vendor's experience validating security requirements for software applications.
7. Describe vendor's experience using black box security testing techniques for assessing software applications.
8. Describe vendor's experience using white box security testing techniques for assessing software applications.
9. List and describe four (4) successful projects performed by the vendor over the past three (3) years that are similar in size, scope, and business focus to this request at mid-size or larger organizations. For each project, include details of the projects including, but not limited to, size, scope, business focus, challenges, and successes.
10. Provide a copy of findings, sanitized, that demonstrates quality and depth of reporting capabilities.
11. Describe the level and types of liability insurance that the vendor carries.
12. Provide at least three (3) references for projects of similar size, scope, and business focus that SERS can contact.

B. Proposed Service

1. Clarify whether this service will be provided by the vendor, or by another company for which the vendor is acting as a broker or sales agent. If the latter, explain.
2. Does vendor have sufficient, dedicated, qualified resources that can be committed to SERS for the project?
3. Identify how many staff will be assigned to this work and their location.

4. Describe the qualifications of the assigned staff (certifications, experience, etc.).
5. Can the vendor meet SERS' schedule for project completion? If not, please explain.
6. Describe the vendor's bonding process and coverage of employees.
7. Affirm that no staff assigned to work on this project has been convicted of a felony.
8. Affirm that key assigned staff are full-time employees of the vendor.
9. Describe vendor's plan or approach for performing the work and satisfying the scope of work outlined in Section III of this proposal. **Be specific and thorough.** Include any additional related or more in-depth services that would benefit SERS in this assessment.
10. Describe vendor's project management approach specific to this project.
11. From the vendor's experience, what are the most important elements for successful projects similar to this?
12. From the vendor's experience, what are the most significant challenges for successful projects similar to this?

C. Standards of Conduct

1. Does the vendor have a firm written code of conduct or set of standards for professional behavior? If so, attach a copy and state how they are monitored and enforced.
2. How does the vendor identify and manage conflicts of interest?
3. Are there any potential conflicts of interest that the vendor would have in providing the requested services to SERS? If yes, explain.
4. List and describe any relationships and/or contacts that the vendor or its officers or employees have had with any SERS Retirement Board member and/or staff member within the last 12 months. Board member information is available at the www.ohsers.org website.
5. Has the vendor or any officer or employee given any remuneration or anything of value directly or indirectly to SERS or any of its Retirement Board members, officers, or employees? If yes, identify the recipient and remuneration or

thing of value. Additional information on the Ohio ethics law in this area may be found at:

http://www.ethics.ohio.gov/Retirement_System_Information_Sheet.html.

6. Has the vendor or any officer, principal or employee given any remuneration or anything of value as a finder's fee, cash solicitation fee, or fee for consulting, lobbying or otherwise, in connection with this RFP? If yes, identify the recipient and remuneration or thing of value.
7. Within the last five (5) years:
 - a. Has the vendor, or any officer or employee of the vendor been a defending party in a legal proceeding before a court related to the provision of the services?
 - b. Has the vendor, or any officer or employee been the subject of a governmental regulatory agency inquiry, investigation, or charge?

If yes to any of the above, describe the event and the current status or resolution; include any case citation.

D. Fees

1. Provide a not-to-exceed, fixed-cost price quote for this project, stating the total cost for the project, including any and all travel and reimbursable expenses.

Appendix B

SERS' MASTER AGREEMENT

MASTER AGREEMENT FOR IT CONSULTANT SERVICES

This Master Agreement for IT Services ("Master Agreement") is made this _____ day of _____, 202__, (the "Effective Date") by and between the **SCHOOL EMPLOYEES RETIREMENT SYSTEM of Ohio**, located at 300 E. Broad Street, Columbus, Ohio 43215 ("SERS") and _____ located at _____ ("Consultant").

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Services.** In accordance with the provisions hereof and such Statement of Work ("SOW") as may hereafter be completed by SERS and Consultant, Consultant shall furnish to SERS the services ("Services") of experienced, qualified information technology personnel ("Personnel"), employed or contracted by Consultant to perform for SERS such consulting, analysis, design and/or programming services as requested by SERS in the SOW, as hereinafter defined. [Add tailored discussion of services as identified in the RFP. If future Services are possible and were part of the RFP make sure description of services addresses.]
2. **Non-exclusivity.** This Master Agreement is entered into on a non-exclusive basis. SERS shall have no limitation on its right to obtain services of the same kind described in this Master Agreement from any other source at any time.
3. **Request for Services.** SERS shall request Services by delivering to Consultant a Statement of Work ("SOW") substantially in the form set forth in **Exhibit A**. Upon receipt of the SOW, Consultant shall select Personnel qualified to perform the requested Services, complete the SOW, including the rate to be charged and return it to SERS for its final approval. SERS may reject the Personnel selected if, in its sole opinion, the qualifications of such Personnel are unsatisfactory. SERS reserves the right to modify the scope of requested services at any time.
4. **Acceptance and Payment.** Upon receipt by SERS of a proper invoice from Consultant, SERS shall pay any amounts not in dispute for Services identified in the invoice and accepted by SERS. The Consultant shall invoice SERS not more often than monthly. Each invoice shall provide the details for all Personnel who performed Services under this Master Agreement or applicable SOW, and shall contain, at a minimum, (i) an itemized identification of the Services performed for SERS, (ii) the dates and amount of time (in tenths of an hour increments) for each of the

Services performed and (iii) the name(s) of the individual(s) performing the Services. Unless otherwise provided for in the SOW, the Consultant shall submit invoices to SERS monthly during the term of this Master Agreement. SERS shall pay a proper, undisputed invoice not later than twenty (20) business days from the date of receipt. Other than compensation for Services set forth in this Master Agreement or SOW, there shall be no additional amounts paid by SERS.

5. **Personnel.**

- (a) Personnel provided to perform services shall have the proper skills, including interpersonal skills, training, knowledge and background to perform in a competent and professional manner. Personnel shall perform under the direction of, and in accordance with, the standards established by SERS or its designated Project Manager. While on SERS' premises, Personnel shall adhere to all SERS' rules, regulations and policies concerning work hours, conduct, and security requirements. At the time of any Personnel being assigned, Consultant shall advise SERS in writing of any vacation time such Personnel is entitled to during the period for which Services are to be performed and when such vacation will be scheduled. Such Personnel will advise SERS not less than fifteen (15) days, and preferably thirty (30) days, in advance of taking any vacation.
- (b) If at any time, SERS determines any Personnel to be unsatisfactory, SERS may, by telephone, mail or facsimile, request the immediate removal of such Personnel from further performance of Services. SERS shall not be charged for Services of such Personnel once such request has been made. SERS shall not be charged, or if charged, shall be reimbursed, for amounts paid for such Personnel for such periods of time after notification has been provided by SERS to Consultant where such Personnel was unable to perform Services in a manner equal to that of a well-qualified, experienced professional. Consultant, at SERS' option, shall provide, after notification has been provided by SERS to Consultant, Replacement Personnel ("Replacement Personnel") as set forth in division (b) hereof.
- (c) Consultant shall use all reasonable means to ensure the continued availability of Personnel selected to provide Services. If, for any reason, Personnel providing services under this Agreement terminate or are to be replaced, Consultant shall, where possible, provide SERS with thirty (30) days prior notice of the impending replacement. Consultant shall provide SERS with Replacement Personnel with appropriate skill, knowledge and training. Replacement Personnel shall, where possible, be made available as of the date that the previous Personnel performing Services

terminates or is removed, but in no event later than ten (10) business days from the date that the prior Personnel terminates or is removed. In all cases where Replacement Personnel are furnished, including where removal of the prior Personnel had been requested by SERS, SERS shall not be obligated to make any payment for Services performed by Replacement Personnel for the number of hours necessary for SERS to train such Replacement Personnel to perform to SERS satisfaction, the Services previously performed by the Personnel replaced in a manner equal to that that would be performed by a well-qualified, experienced person at the same stage of work in the assignment as had been reached by the Personnel replaced. (In no event shall this number of hours exceed eighty (80).

6. **Information Security.**

- (a) "Personal Information" means an individual's first name or first initial and last name in combination with any one of more of the following data elements, when either the name or the data elements are not encrypted:
- Social Security Number
 - Driver's license number or identification card number
 - Individual financial account information
 - Medical information
 - Health insurance information
- (b) Consultant acknowledges and agrees that, in the course of its engagement by SERS, Consultant may receive or have access to Personal Information. Consultant represents and warrants that its access to and use of Personal Information does and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives. Consultant shall be responsible for, and remain liable to, SERS for the actions and omissions of its agents and employees concerning the treatment of Personal Information as if they were Consultant's own actions and omissions.
- (c) Without limiting Consultant's obligations under Section 6(b), Consultant shall implement administrative, physical and technical safeguards to protect Personal Information that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which Personal Information is accessed or used, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

7. **Security Breach Notification/Indemnification.** Consultant agrees to comply with all applicable laws that require the notification of individuals in

the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Consultant's security obligations, or other event requiring notification under applicable law, Consultant agrees to:

- (a) Notify SERS by telephone and e-mail of such an event within 24 hours of discovery,
- (b) Assume responsibility for informing all such individuals in accordance with applicable law, and
- (c) Indemnify and hold SERS, its subsidiaries and/or affiliated entities, board members, officers, employees, and agents, harmless from and against any and all liabilities, losses, claims, damages, or other harm related to such Notification Event.

8. **Wages, Insurance and Indemnification.**

- (a) Personnel provided by Consultant to perform services for SERS under this Master Agreement are not public employees for purposes of Chapter 145 of the Ohio Revised Code.
- (b) Personnel furnished are and shall continue to be employees or subcontractors of Consultant and shall not for any purposes be considered to be SERS' employees or agents. Consultant shall be responsible for all obligations it may have to Personnel for the payment of all wages, salaries and benefits to which they may be entitled and for the withholding and payment of all payroll and other taxes as required by law. Consultant shall maintain: (i) Workers Compensation and Unemployment Insurance as required by Ohio law; (ii) employer's liability insurance applicable to and covering all Personnel with limits of liability not less than \$1,000,000; and (iii) comprehensive general liability insurance with limits of liability not less than \$1,000,000 for bodily injury, property damage and personnel injury. Upon request, Consultant shall furnish to SERS certificates of such insurance and written notice from its insurance carrier that such insurance shall not be canceled without SERS receiving thirty (30) days prior written notice from the carrier.
- (c) Consultant shall indemnify and save SERS harmless from any and all suits, proceedings at law or in equity, claims, liabilities, costs, payments and expense including reasonable attorney fees asserted against or incurred by SERS, arising out of or in connection with any claim for damages to property or injuries to persons, to the extent that such damages or injuries shall have been caused by, or shall have resulted from the willful or negligent acts or omissions of

Consultant's employees, Personnel, or agents, in any way related to this Master Agreement or the performance of Consultant's obligations hereunder.

- (d) Consultant shall indemnify and save SERS harmless from any and all liability, damages, losses, claims, demands, assessments, actions, causes of action, costs including reasonable attorney fees, arising out of or resulting from a reclassification or attempt to reclassify Consultant's employees or subcontractors as employees of SERS, including without limitation any tax liability including interest and penalty resulting from SERS' failure to pay, deduct or withhold income taxes, Federal Insurance Contribution Act taxes, or Federal Unemployment Tax Act taxes with respect to Consultant and or its employees.
- (e) Consultant agrees to defend at Consultant's own cost and expense any claim or action against SERS, its subsidiaries and/or affiliated entities, board members, officers, employees, and agents, for actual or alleged infringement of any patent, copyright or other property right (including, but not limited to, misappropriation of trade secrets) regarding any computer program, documentation, service, work and/or other materials furnished to SERS by Consultant or Personnel providing Services. Consultant further agrees to indemnify and hold SERS, its subsidiaries and/or affiliated entities, board members, officers, employees, and agents, harmless from and against any and all liabilities, losses, and expenses (including, but not limited to attorneys fees and court costs) associated with any such claim or action.
- (f) Consultant shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed to in writing between the parties hereto. SERS shall have the right to participate in the defense of any such claim or action, at its own expense and through counsel of SERS' choosing. If an injunction is sought or obtained against use of any computer program, documentation or other material furnished to SERS, Consultant shall, at its expense, either (i) procure for SERS the right to continue to use without additional cost or charge to SERS the infringing computer program, documentation or other material as set forth in this Master Agreement, or (ii) replace or modify the infringing computer program, documentation or other material to make its use non-infringing while being capable of performing the same function(s) while preserving the original functionality. Notwithstanding the foregoing, Consultant has no obligation for any claim based on SERS' modification of any such computer program, documentation or other material or its

combination, operation, or use with any product, data or apparatus not specified or provided by Consultant, provided that such claim solely and necessarily is based on such combination, operation or use.

9. **Non-Solicitation of Employees/Liquidated Damages.**

- (a) Unless otherwise agreed in writing signed by both parties, neither party shall solicit the other party's personnel during the term of this Master Agreement, or for a period of one year thereafter.
- (b) In the event of a breach of this provision, the breaching party shall be liable for liquidated and agreed damages since the amount of actual damages is not foreseeable, in an amount equal to the most recent annual salary paid by the non-breaching party to the subject employee. If the subject employee has been there less than one year then the most recent salary paid will be annualized to calculate the annual salary amount. Provided however, the posting of job openings on a party's web site or through general media outlets shall not be deemed solicitation under this provision.

10. **Ownership.**

- (a) All programs, documentation, specifications and any other technical information or work (collectively "Work") developed or prepared by Consultant or Personnel for SERS hereunder shall be considered a work-made-for-hire under the U.S. copyright laws, and the property of SERS. To the extent that title to any such Work may not, by operation of law, vest in SERS for such Work, or may not be considered a work-made-for-hire, then in consideration for any payment received under this Master Agreement, Consultant hereby irrevocably assigns to SERS all rights, title and interest therein. All such Work shall belong exclusively to SERS, with SERS having the right to obtain and hold in its own name copyrights, trademarks, patents, registrations, or such protection as may be appropriate to the subject matter and any extensions and renewals thereof. Consultant reserves no right or interest in the Work. Consultant agrees to give SERS, its successors and assigns, and any person designated by SERS, reasonable assistance, without charge to SERS, required to perfect or secure SERS' rights described in this paragraph. Consultant and/or Personnel shall execute, at the request of SERS, specific assignments to SERS of any patent, copyright or other intellectual property interests in the Work applicable to the United States and to any and all foreign countries, as well as execute all papers and perform all lawful acts which SERS deems necessary in connection therewith, including the giving of

testimony that the Consultant retains no right or interest in the Work. This Section shall survive the termination of this Master Agreement regardless of the cause of termination.

- (b) Consultant warrants that Personnel shall not cause or permit any work to include or incorporate any material in which any third party shall have registered or unregistered copyrights, patent rights, trade secrets, or other proprietary rights or interests unless SERS is given notice prior to use of such material, SERS gives approval, and the Consultant secures all necessary licenses which are hereby assigned to SERS for such material.
11. **Confidentiality.** SERS may disclose certain confidential, trade secret, and/or proprietary information to Consultant, its employees, subcontractors, and agents in connection with this Agreement. Consultant shall execute a Confidentiality and Non-Disclosure Agreement in the form of the attached **Exhibit B.** Consultant shall have its employees, subcontractors and agents who may have access to such information sign The Independent Contractor Intellectual Property and Confidentiality Agreement in the form of the attached **Exhibit C.** The signed agreements shall be provided to SERS prior to the commencement of any work.
12. **Reports.** Upon SERS' request, Personnel providing Services shall provide to SERS periodic written reports in a form and covering such matters relating to the performance of Services as SERS shall reasonably request.
13. **SERS Responsibilities.** SERS shall furnish to Personnel adequate workstations, reasonable access to the SERS computer systems, and necessary hardware and software as needed for performance by Personnel of the Services.
14. **Duration of Master Agreement.**
- (a) This Master Agreement shall be effective on the date stated in the introductory paragraph One of this Agreement and shall continue in effect for a period of three (3) years unless earlier terminated as provided herein. Notwithstanding the foregoing, in no event shall this Agreement have a term exceeding sixty (60) months from the Effective Date.
- (b) Upon fourteen (14) calendar days' notice, either SERS or Consultant may terminate this Master Agreement or any SOW at any time by giving the other written notice of termination, whereupon this Master Agreement or SOW shall terminate on the effective date of such termination specified in such notice. In the case of failure of the Consultant to perform in which case termination, in SERS' discretion,

may be immediate.

- (c) In the case of notice given by Consultant, the date of termination shall not be earlier than the date on which all Personnel assigned to assignments pursuant to this Master Agreement shall have completed the performances of all such assignments to SERS' reasonable satisfaction. Upon termination, SERS shall be liable only for actual charges incurred through the date of termination.
 - (d) Upon termination, Consultant shall take reasonable steps to dispose of, or return, all information and materials belonging to SERS, including any and all materials developed hereunder, in accordance with SERS' written instructions.
15. **Representations and Warranties.** As of the Effective Date and at the time of execution of each SOW hereunder, the Consultant represents and warrants that it:
- (a) Has the authority to enter into this Master Agreement and perform the Services provided herein;
 - (b) Will perform the Services in a workmanlike and professional manner consistent with all applicable statutes, regulations, or ordinances and within applicable industry best practices.
 - (c) Will comply with all applicable federal and state laws, including but not limited to, the laws contained in Chapter 102 of the Ohio Revised Code (Ohio ethics laws) governing ethical behavior, understands that such provisions apply to persons doing or seeking to do business with SERS, and agrees to act in accordance with the requirements of such provisions;
 - (d) Maintains a non-discrimination policy, and is an equal employment opportunity employer; and
 - (e) Has not paid and will not pay, has not given and will not give, any remuneration or thing of value directly or indirectly to SERS or any of its board members, officers, employees, or agents, or any third party in connection with obtaining or performing any of the engagements of this Master Agreement or otherwise, including, but not limited to, a finder's fee, cash solicitation fee, or a fee for consulting, lobbying or otherwise.
16. **Notices.** Any notice required or permitted to be given hereunder shall be deemed properly given at the time it is (a) personally delivered, (b) sent via a national third party courier who provides signature receipts of delivery, (c)

received via electronic mail, (d) received via fax, or (e) sent via Certified Mail Return Receipt Requested, postage prepaid, to the other party, properly addressed and postpaid, to the address set forth in introductory paragraph of this Master Agreement, or to such other address as SERS and Consultant may specify in writing. If verbal notice is given, it shall be followed immediately by written confirmation of the notice. Notices should be sent to the following named individuals of the parties or to such other individual representatives of a party as so designated in writing by the respective party:

If to SERS: CISO
School Employees Retirement System of Ohio
300 East Broad Street, # 100
Columbus, OH 43215

With a copy to for General Counsel
legal matters and School Employees Retirement System of Ohio
notice(s) of 300 East Broad Street, # 100
termination Columbus, OH 43215

If to CONSULTANT:

17. **Public Record Requests.** Consultant acknowledges that SERS is subject to Ohio Public Records Act, Ohio Revised Code Section 149.43, including the requirement to comply with requests for disclosure of public records. Consultant may designate certain of its records in the possession of SERS or information included in this Agreement as exempt from disclosure under the Public Records Act. Consultant must support each claimed exemption and provide SERS with a redacted copy of the Agreement or material at issue that is acceptable to SERS and in compliance with the Public Records Act within thirty days of the Agreement being signed or the provision of the material to SERS. In the event of a public record request that seeks Consultant's exempt information or data, SERS will refrain from disclosing the information or will make reasonable efforts to contact Consultant in sufficient time to allow Consultant to take appropriate legal steps to protect the exempt information from disclosure. If Vendor does not initiate legal action to protect its information within ten (10) business days of SERS' notice of its intent to disclose Vendor's information, Consultant shall be deemed to have waived its rights to seek an injunction or protective order and SERS shall be entitled to make such disclosure without further notice or liability to Consultant. If as a result of the position taken by Consultant regarding the exempt status of the information SERS is assessed any damages or fees, Consultant shall indemnify SERS for such damages or fees.

18. **General.**

- (a) SERS and Consultant agree that Consultant is an independent contractor with respect to its performance hereunder and nothing hereunder shall be construed to imply the existence of a joint venture, partnership, principal/agent or employer/employee relationship.
- (b) This Master Agreement shall be construed and enforced in accordance with the laws of the State of Ohio and any applicable federal laws.
- (c) This Master Agreement is not assignable without the prior written consent of SERS. Any attempt by Consultant to assign any of the rights, duties, or obligations of this Master Agreement without such consent is void.
- (d) This Master Agreement can only be modified by written agreement duly signed by persons authorized to sign agreements on behalf of SERS and of Consultant.
- (e) If any provision or provisions of this Master Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (f) Consultant agrees that it will not, without prior written consent of SERS, use in advertising, publicity or otherwise the name of SERS, SERS' logo, service marks, domain names, symbols or any affiliate of SERS, or refer to the existence of this Master Agreement in press releases, advertising or materials distributed to prospective customers.
- (g) The headings in this Master Agreement are for reference only and not to be used to interpret the intention of the parties to this Master Agreement.
- (h) Failure by either party at any time to enforce any of the provisions of this Master Agreement shall not constitute a waiver by such party of such provision or in any way affect the validity of this Agreement.
- (i) The following provisions shall survive the termination of this Master Agreement or any SOW: paragraphs 4, 8, 9, 10, 11, 15, 16, 17 and 18.

- (j) SERS and Consultant acknowledge that they have read this Master Agreement, understand it, and agree to be bound by its terms and conditions. Further, both parties agree that this Master Agreement, inclusive of all SOWs and Exhibits currently or in the future expressly incorporated into and made part of this Master Agreement, is the complete and exclusive statement of the Master Agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Master Agreement.

- (k) This Master Agreement may be executed in counterparts each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument. An electronic or facsimile copy of the executed Master Agreement shall be deemed, and shall have the same legal force and effect as, an original document.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound thereby have hereunto set their duly authorized signatures as of the Effective Date.

**SCHOOL EMPLOYEES RETIREMENT
SYSTEM of Ohio**

CONSULTANT:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attachments:

Exhibit A: Pro-Forma Statement of Work

Exhibit B: Pro-Forma Confidentiality and Nondisclosure Agreement

Exhibit C: Pro-Forma Independent Contractor Intellectual Property and Confidentiality Agreement

EXHIBIT A

STATEMENT OF WORK

This Statement of Work is issued pursuant to that Master Agreement effective the _____ of _____, 202__ by and between **SCHOOL EMPLOYEES RETIREMENT SYSTEM of OHIO (“SERS”)** and _____ (**“Consultant”**), and incorporates all of the terms therein and is made part thereof.

I. Services to be Performed

II. Period of Project

A. Requested Starting Date:

B. Estimated Duration for which Services will be needed:

III. Personnel Selected (attach additional pages if more than one person)

Name:

Address:

Telephone:

IV. Compensation

V. Acknowledgment

Acknowledged and accepted this _____ day of _____, 202__.

**SCHOOL EMPLOYEES RETIREMENT
SYSTEM of Ohio**

CONSULTANT:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT B

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement ("Agreement") is entered into as of the _____ day of _____, 202__ (the "Effective Date"), by and between **SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO ("SERS")**, 300 East Broad Street Suite 100, Columbus, Ohio 43215 and _____ ("**CONSULTANT**"), with its principal place of business at _____. In consideration for the exchange of the mutual covenants and promises set forth below, the parties agree as follows:

1. The parties agree that it is necessary and desirable that SERS disclose to CONSULTANT and CONSULTANT disclose to SERS confidential, sensitive or proprietary information or trade secrets including but not limited to project information, computer programs (both object code and source code), functional specifications, designs, plans, drawings, analysis, research, processes, know-how, formulae, methods, ideas, business information, sales and marketing research, customer, member or participant information, materials, plans, accounting and financial information, personnel records, and other documentation or information whether or not expressly designated as confidential (collectively referred to herein as "Information"). Each party considers the Information it may disclose to the other to be valuable assets or proprietary trade secrets of the disclosing party.
2. The parties agree that the Information shall be used solely for the purpose of reviewing and using the Information in connection with the potential and/or actual providing of services by CONSULTANT to SERS. No copies of the Information shall be made except with the specific written authorization of the party disclosing the Information, except that either party may make copies of the Information disclosed by the other, so long as said copies are used solely in connection with the potential and/or actual providing of services by CONSULTANT to SERS.
3. The parties hereby acknowledge that the Information is valuable confidential, sensitive, proprietary or trade secret assets of the disclosing party and each party agrees that it shall: (a) not communicate Information to any third party, unless required by law; (b) by using means no less than it uses to protect its own most valuable trade secrets, prevent inadvertent or wrongful disclosure of Information to any third party; and (c) limit internal access to employees only on a "need to know" basis for the purposes set forth in Paragraph 2 hereof.

4. Except for the purposes of Paragraph 2 above, or for any purpose the parties may hereafter agree upon in writing, neither party shall use the Information for productive use or circulate it within its own organization, but to the extent necessary for negotiations, discussions, and consultations with employees of the disclosing party or authorized representatives of the disclosing party. Each party shall maintain a printed or typed list of the employees (including full name, title, work address, and work phone number) permitted access to the Information and shall, upon request, provide the other party with a copy of the list.
5. The obligations of confidentiality shall terminate with respect to any particular portion of the Information if:
 - 5.1. it was in the public domain at the time of communication thereof to the recipient party;
 - 5.2. it entered the public domain through no fault of the recipient party subsequent to the time of communication thereof;
 - 5.3. it was in the recipient party's possession free of any obligation of confidence at the time of communication thereof;
 - 5.4. it was rightfully communicated to the recipient party free of any obligation of confidence subsequent to the time of communication thereof; or
 - 5.5. it was developed by employees or agents of either party completely independently of and without reference to any of the information subject to this Agreement.
6. All Information, and any and all copies thereof, shall, upon written request from and at the sole discretion of the disclosing party, either (a) be returned to the disclosing party, or (b) the receiving party shall provide a written certification to the disclosing party that any and all copies of the Information provided by the disclosing party have been destroyed.
7. So long as SERS does not breach this Agreement, nothing in this Agreement shall restrict SERS (a) from dealing with any other third party regarding SERS' evaluation, design, development, or use of any material or information, including, without limitation, computer programs and documentation, regardless of any similarity to the Information, or (b) from SERS' own design, development, or use of any material or information, including, without limitation, computer programs and documentation, regardless of any similarity to the Information. This paragraph shall survive any return of the Information provided by one party to the other.

8. Each party represents to the other that providing the Information to the recipient pursuant to this Agreement shall not be in violation of the proprietary rights of any third party and shall not violate any agreement with any third party concerning such Information.
9. Each party recognizes that the wrongful disclosure of the Information by its employees or agents, shall give rise to irreparable injury to the disclosing party, inadequately compensable in damages, and that each party hereto shall have, in addition to any other remedies available to it, the right to injunctive relief enjoining such wrongful disclosure by the recipient party, the party hereby acknowledging that other remedies are inadequate.
10. This Agreement shall govern all communications between the parties during the period from the Effective Date of this Agreement to the later of (a) the date on which either party received written notice from the other party that subsequent communications shall not be so governed, or (b) the termination of all agreements between the parties. However, the terms and conditions of this Agreement shall survive the termination, with or without cause, of this Agreement or any other agreement between the parties. As appropriate in the context of this Agreement, SERS and CONSULTANT are referred to herein as a disclosing or recipient party. This Agreement shall be construed in accordance with the law of the State of Ohio and any applicable federal laws.

IN WITNESS WHEREOF, each party, intending to be legally bound thereby, has hereunto set its duly authorized signature as of the Effective Date.

**SCHOOL EMPLOYEES RETIREMENT
SYSTEM of Ohio**

CONSULTANT:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT C

INDEPENDENT CONTRACTOR INTELLECTUAL PROPERTY AND CONFIDENTIALITY AGREEMENT

The undersigned, in consideration of an agreement to provide to **School Employees Retirement System ("SERS")** services as an independent contractor, hereby agrees:

I will be devoted to the advancement of SERS's interest by performing such duties as may have been or may be assigned to me.

1. "Intellectual Property" means inventions, discoveries, improvements, ideas, works of authorship, including computer software and related documentation, trade secrets, and other learned or acquired information, whether or not the subject of a patent, copyright, or trademark registration. I will disclose promptly and in writing to SERS, and I hereby assign and agree to assign to SERS all of my right, title, and interest in and to, all Intellectual Property which I make, conceive, or create (in whole, in part, alone or with others): (a) in the course of performing my duties as an independent contractor for SERS (whether in or outside regular working hours); or (b) during my term of service, which relates to SERS's business or interests; or (c) with the use of SERS's time, materials, or confidential information.
2. I agree that during or after my term of service with SERS, I will on request of SERS execute specific assignments to SERS or its nominee of any such Intellectual Property, applicable to the United States and to any and all foreign countries, as well as execute all papers and perform all other lawful acts which SERS deems necessary in connection therewith, including the giving of testimony. I understand that all expenses in connection with formal protection of such Intellectual Property shall be borne by SERS or its nominee. SERS at its sole discretion will decide whether to seek formal patent, copyright, or trademark protection for such Intellectual Property.
3. I agree that during my term of service and thereafter I will hold in confidence all matters and things related to the business of SERS or its affiliated entities, of a confidential or secret nature including, but not limited to, cost data, vendor lists, private business matters, formulas, designs, methods and processes, systems, present and prospective business ventures, and newly discovered uses for known technology, as to which I may acquire information or possession by reason of my affiliation with SERS during my term of service; and that I will not, without the written consent of SERS, except as may be required in the fulfillment of my duties as an independent contractor in service to SERS, use any such matter or thing or disclose to others any matter or thing relating to the business of SERS or its affiliated entities.

4. I agree that SERS has all right to possession of, and all title in and to, all computer disks, audio and video recordings, pictures, film, papers and documents (including drawings), and copies, abstracts and summaries thereof, which I may originate or which may come into my possession in any way during my term of service and which relate to the business of SERS or its affiliated companies, and I further agree to deliver such things promptly to SERS on expiration or termination of my contract with SERS.
5. I further represent that I have not entered into any prior agreements which will prevent my full compliance with the terms of this Agreement, unless such agreements are listed below and copies of such agreements are attached hereto:

_____ (none, if nothing listed)
6. The failure of SERS to insist in any instance on the strict performance of any provision of this Agreement or to exercise any right hereunder shall not constitute a waiver of such provision or such right in any other instance.
7. I agree that the amount paid to me according to my independent contractor agreement constitutes full and complete compensation and consideration to me for all my obligations and services and for all general and specific assignments under this Agreement.

It is understood that my undertaking in foregoing paragraphs 2, 3, 4, 5, and 6 shall be binding upon me both during and subsequent to my term of service with SERS and upon my heirs, successors, personal representatives and assigns, and that this entire Agreement shall inure to the benefit of SERS and its successors and assigns.

Signature of Independent Contractor

Signature of Witness

Printed Name of Independent Contractor

Printed Name of Witness

Date

Date