

Request for Proposal

MASTER RECORD KEEPER AND PERFORMANCE SERVICES

August 2024



SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO
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I. INTRODUCTION

The School Employees Retirement System of Ohio (SERS) is requesting proposals from administrators who offer any of the following services:

- master record keeping (fund accounting)
- performance calculations and reporting

For clarity, SERS is requesting a service provider and therefore stand-alone software package(s) will not be considered.

Proposals can be submitted for one or more of the services listed above. If responding for more than one service, only one combined response is required.

SERS will not consider responses for other services not mentioned above.

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.

Pursuant to Ohio Revised Code Section 3309.12, SERS' custodian is the Treasurer of the State of Ohio ("TOS"). The TOS has sub-contracted the custodian duties to the Fifth Third Bank, an Ohio-based bank. This bank has sub-contracted with the Bank of New York as the global custodian bank for international custody services. TOS' role in overseeing SERS' assets includes oversight of the operational risk of the SERS Fund with regard to the custody and safekeeping of all Fund assets. SERS has approximately \$19 billion in assets and invests in public and private securities across the following asset classes/strategies: Global Equities, Global Fixed Income, Global Private Equity, Global Real Estate, Global Infrastructure, Global Private Credit, Opportunistic & Tactical, Cash Equivalents, and Overlays. The majority of SERS' assets are invested and managed externally by top-tier investment managers. SERS internally manages a liquid cash pool and three ETF accounts. At current count, SERS has approximately 230 total accounts. The table below gives counts and types of account (separate account, commingled fund, or partnership) for each asset class.

Asset Class	AUM	Separate Account	Commingled Fund	Partnership
Global Equities	~\$8.2B	19	9	0
Global Fixed	~\$2.4B	10	3	1
Global Infrastructure	~\$1.2B	0	0	14
Global Private Credit	~\$1.2B	0	0	23
Global Private Equity	~\$2.5B	0	0	83
Global Real Estate	~\$2.2B	1	0	28
Opportunistic & Tactical	~\$527.3M	1	5	14
Cash Equivalents and Overlays	~\$492.8M	5	0	0

SERS invests in developed and emerging market stocks & bonds, forward exchange contracts, mutual funds, ETFs, futures contracts, options, swaps (total return, interest rate, credit default), closed-end funds, bank debt, hedge funds, and limited partnerships. Holdings and transaction volume files are available in the same location as this RFP on www.ohsers.org.

Oversight for the services being sought in this RFP will be provided by the SERS Investment Accounting Division (IAD). IAD has four members who report to the Assistant Director – Financial Reporting.

An Investment Staff consisting of eleven members oversees the external managers and administers the investment program in accordance with investment policies as established by the Retirement Board. In addition, the Board approves an Annual Investment Plan prepared by Staff. Links are available for the most recent Annual Investment Plan, Statement of Investment Policy and other investment related reports [here](#).

Links are available for the most recent [SERS Annual Comprehensive Financial](#)

[Report and other financial reports here.](#)

III. SCOPE OF SERVICES

SERS is seeking a qualified vendor to provide the following required services:

Master Record Keeping Services

- The service will record all investment related activity. This may include daily trades, cash contributions or redemptions, corporate action transactions, and accruals for interest and dividends. Daily entry of all contributions and distributions for limited partnership structured alternative assets. Alternative asset contribution and distribution cash flow transactions must be entered with as much detail (i.e. return of capital, realized gain, fees, etc.) as the cash flow notice provides. Daily activity entries must be detailed enough to include security identifiers, transaction type, trade date, settle date, and base and local currency amounts.
- Daily, the service will provide a multi-currency cash reconciliation against the applicable custodial bank for each individual account. This cash reconciliation will list the account, the date of the break, the security involved, the amount of the break, the aging of the break, and an explanation for the break. The service provider will work daily with the custodial bank to clear any cash breaks.
- On a monthly basis, the service will close the fully reconciled fund accounting records on a business day to-be-agreed upon between both parties, but no greater than the 8th business day. Fully reconciled fund accounting records include month-end cash, position, and market values that have been reconciled between the service provider, SERS' external investment managers, and the applicable custodial bank. The full results of these reconciliations, with explanations of any variances, will be provided to SERS for our review before the accounting record close date.
- On a monthly basis, the service will reconcile the unfunded commitment for each alternative investment account back to the Capital Account Statements.
- Monthly trial balance of all ledger accounts. This data must be available at both the aggregated level (including Total Fund, Asset Class level and other aggregations of SERS choosing), and at the individual account level.
- Customizable monthly file of general ledger entries to be imported into SERS ERP system (Oracle NetSuite).

- Obtain security prices and FX rates from independent accredited pricing services with backup pricing services available in case of primary vendor outage.
- Daily estimated Fund valuations at aggregated levels and at the individual account level.
- Monthly reconciled Fund valuations at aggregated levels and at the individual account level. The monthly valuation process will include the service provider independently gathering and updating all alternative asset limited partnership Capital Account Statements that have been made available prior to the accounting close.
- Weekly position reconciliations with the Fund's custodian(s). For clarity, these reconciliations are in addition to the month-end reconciliations noted above included in the closing process.
- Calculation and accrual of external management fees (excluding alternative asset accounts).
- Financial Statements (i.e., Balance Sheet, Income Statement, Statement of Cash Flow, etc.) and client specific reporting, including but not limited to holdings, transaction, income, missing pricing, and stale pricing.
- T+1 post-trade investment compliance monitoring with customizable rule configurations for each individual account's Investment Guidelines, excluding the alternative asset classes (Private Equity, Real Estate, Infrastructure, Private Credit).
- Investment compliance monitoring must also be able to ingest the holdings of specified benchmark indices for compliance exception reporting.
- Investment compliance monitoring must also be able to provide details on 1) original date of exception, 2) date exception clears, 3) detailed listing of which securities are the cause of the exception.

Performance Services

- Daily estimated performance at the individual account, aggregate level(s), and Total Fund level over multiple extended time periods (i.e. 1 year, 3 years, 5 years).
- Monthly final performance at the individual account, aggregate level(s), and Total Fund level over multiple extended time periods. Final performance calculation is to be provided after accounting records have been reconciled and closed. The proposed solution must be able to

calculate monthly returns using the Modified Dietz methodology on both a Gross and Net of Fees basis. With the Modified Dietz methodology, SERS will need to be able to specify our threshold for significant cash flow.

- Monthly reconciliation of calculated returns back to the returns supplied by each of our external investment managers excluding the alternative asset classes (Private Equity, Real Estate, Infrastructure, Private Credit).
- Ability to provide analytical reporting.

SERS will consider only proposals for the services as described above. **Responses submitted for other services will not be considered.**

IV. PROPOSAL SUBMISSIONS

A. Intent to Respond

If the vendor intends to respond to this RFP, a Notice of Intent to do so should be sent to SERS by August 30, 2024. The Notice should be sent by email to the SERS contact listed in Paragraph C. below, and contain the vendor's name, its intent to respond, the name of a contact person and the contact person's telephone number, and email. Submitting this Notice will not obligate a vendor to submit a Response nor be a prerequisite for submitting a Response but will allow SERS to send out any necessary information to interested vendors.

B. Response Deadline

The completed Response must be received by **September 13, 2024 4:00 p.m., Eastern Daylight Time**. Responses received after the Response deadline will not be considered.

C. Delivery

Contact person for all responses, and communications:

Investment Accounting Division
Finance Department
School Employees Retirement System
300 East Broad Street, Suite 100
Columbus, OH 43215
investacct@ohsers.org
Telephone: 614-222-5864

An unbound original and 10 copies of the Response are to be sent by mail or delivery service. Faxed transmissions are not acceptable and will not be considered.

An electronic courtesy copy can also be submitted via email. Receipt of the courtesy copy does not constitute compliance with submission deadline.

D. 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.
2. The Questionnaire in Appendix A. with the question and/or request duplicated in the Response before the answer or response.

E. 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.

F. 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 vendor(s) with persons should be limited to that business and should not relate to this RFP. In addition, such vendors should not discuss this RFP with any employee of SERS' managers, the Treasurer of the State of Ohio, Fifth Third Bank and Bank of New York

G. Questions Relating to this RFP

All questions concerning this RFP must be received in writing by email by the Contact person by **August 23, 2024, 4:00 p.m., Eastern Time**. Answers to only emailed questions received by this deadline will be available to all vendors by a posting at www.ohsers.org. Questions submitted after 4 p.m. on August 23, 2024 or other than by email will not be considered.

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.

Based upon this review, candidates will be selected to make presentations to SERS Staff in Columbus, Ohio. The review committee at SERS may include: (1) Chief Financial Officer, (2) Chief Investment Officer (or delegate), (3) Investment Compliance Analyst, (4) Lead Investment Accountant, (5) Senior Investment Fund Accountant, (6) Senior Investment Fund Accountant, (7) Investment Fund Accountant, and (8) Assistant Director, Financial Accounting.

Following completion of the presentations in Columbus, Staff may conduct further due diligence, possibly involving visits to selected candidates' offices. Finalists selected by Staff may be asked to make a presentation to the SERS' Retirement Board.

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.

Issuance of RFP:	August 9, 2024
Question Deadline:	August 23, 2024
Response to Written Questions:	August 30, 2024
RFP Response Deadline:	September 13, 2024, 4:00 p.m. EDT
Presentation to Staff in Columbus:	November 2024
Projected Commencement Date:	February 2025

The vendor(s) selected must enter into a contract.

VII. CRITERIA

The following criteria are preferred:

Master Record Keeping Services

- Fund accounting services provided for clients with combined net assets of at least \$200 billion
- Provide fund accounting services to at least five (5) public funds
- Client Service team structure that provides SERS with single-point-of-contact resolution for any/all fund accounting issues. A library of canned GASB reports such as, but not limited to, GASB 40, GASB 72
- For alternative asset classes with limited partnership structures,
 - the ability for the service to record the date a cash flow notice was received in addition to recording the date the cash flow amount is expected to pay or be paid.
 - the ability to automate the process of document collection from any/all external web portals for cash flow notices and Capital Account Statements and then in-turn enter detailed transaction information and valuation adjustments. For clarity, the document collection service is preferred to be able to access any web portal, and not just the most commonly used services such as Intralinks, Sungard DX, Citi, etc.
 - the ability to gather detailed underlying fund holdings, and provide analytical calculations such as IRR, TVPI, DPI. This solution can be via proprietary means, or via a third-party relationship.
 - the ability for the system to report alternative asset management fees, partnership expenses, change in accrued carried interest, and paid carried interest from either Capital Account Statements or cash flow notices into reporting at the Total Fund, Asset Class, and individual account level.
- The ability for the service to ingest intra-month valuation estimate updates for commingled funds, hedge funds, and other non-daily valued assets. For clarity, these intra-month valuation estimates would be delivered by the external investment manager, or their administrator, via email directly to the service provider.
- The ability for the service to collect month-end commingled fund holdings, where made available by the external investment manager, for inclusion in reporting. This commingled fund holdings gathering process is preferred to also be able to process exchange traded derivatives such as futures and options.
- Cash flow forecasting (next business day, next business day +1, etc) inclusive of all asset types and all transaction types at the Total Fund, Asset Class and individual account levels. For clarity, this means cash flow forecasting inclusive of anticipated trade settlements, FX settlements, corporate actions, and alternative asset cash flows.

- Provide access to APIs, Excel Add-Ins, or other technological solutions that streamline the ability for SERS users to gather fund accounting data efficiently.

Performance Services

- Performance and Compliance services provided for clients with combined net assets of at least \$200 billion.
- Provide performance and compliance services to at least five (5) public funds.
- Service team structure that provides SERS with a single-point-of-contact resolution solution for any/all performance and/or compliance issues.
- Performance attribution at a Total Fund, Asset Class, and individual account level. If security level attribution services are available, please indicate if this is an add-on solution, or part of the attribution offering for Total Fund, Asset Class and individual account level.
- The ability to calculate individual return monthly streams for 1) capital appreciation and 2) income. For clarity, the capital appreciate return stream would be the market value/price appreciation, and the income stream would be any transactions in the accounting records attributable to interest payments or dividend payments.
- The ability to construct performance aggregations/composites on-the-fly by SERS users.

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

- Stability of firm (15%)
- Employment of an experienced, well-staffed and professional team dedicated to fund accounting and or performance services, with the ability to maintain independence and avoid conflict of interests in providing services (25%)
- Depth of knowledge, experience and resources including systems to provide required services (35%)
- Proposed fees (25%)

VIII. QUESTIONNAIRE

Vendors must complete the Questionnaire appearing in Appendix A. Responses to the questions should repeat the question and be answered in order. Limit each response to no more than one-half page.

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

Response to the following questions should repeat the question and be answered in order. Please only provide responses for the service(s) that your firm is bidding on.

A. Vendor

1. Briefly describe your firm's background and history in:
 - a. master record keeping / fund accounting.
 - b. Performance calculations and reporting.
2. Please provide a current asset and market profile of your:
 - a. master record keeping / fund accounting business.
 - b. performance calculations and reporting business
3. Provide a breakdown using assets under administration and number of clients for each type of client such as public funds, corporations, foundations, etc., to whom the firm provides:
 - a. master record keeping / fund accounting services.
 - b. performance calculating and reporting.
4. As initial references for your firm, provide the names of clients, including contact name, email, and telephone numbers for:
 - a. Three current clients for each service:
 - i. master record keeping / fund accounting services.
 - ii. Performance calculation and reporting services.
5. Please provide the client turnover rate for the past five years.
6. Describe the level of liability insurance that the vendor carries
7. Do you use artificial intelligence? If yes, how is it used in your business?
8. Please describe your disaster recovery plans, recovery time, and procedures
9. Please provide evidence of meeting the following security criteria:
 - a. ISO 27001 Certified
 - b. SOC 2 Type 2 Certified

B. Personnel - Please provide this for each of the services the respondent is bidding on.

1. Please detail the division of your organization proposed to support and service this potential client relationship. Include an organization chart and define key leadership positions. Would SERS be assigned one dedicated contact and a dedicated service team?

2. List the name and location of the primary individuals who will be responsible for the SERS account. Attach biographies of each, including a current job description, educational qualifications, years of institutional fund experience, and total years with the firm
3. For each individual listed in item B.2, state the total number of accounts to which he/she is assigned, including the type and assets under administration of each account.
4. Describe personnel turnover for the last three years. Please differentiate between individuals leaving the firm and those moving to other departments within the firm.
5. Describe the firm's practices it uses in recruiting and retaining personnel.
6. Discuss any succession plans the firm may have.
7. How do you track, measure, and monitor client satisfaction?
8. Describe any onboarding and ongoing educational sessions, user conferences, publications, or other means you have for keeping clients fully educated and providing a forum for new ideas and needs.
9. How do you monitor and communicate to clients legislative and/or regulatory changes?

C. Proposed Service – Master Record Keeping / Fund Accounting Services

1. Describe how your firm interacts with investment managers and fund custodians.
2. Describe your accounting platform. Do you offer trade date, full accrual, multi-currency accounting?
 - a. Is reporting available in both local and base currencies?
 - b. Describe how you will account for foreign exchange.
3. Do you offer specialized accounting and reporting for limited partnerships?
4. Provide control environment documents for both systems and accounting practices.
5. Please provide the firm's asset pricing policy, including any policies relating to illiquid and thinly traded securities, bank debt, private placements, limited partnerships, commingled funds and hedge funds.

6. Describe your controls around asset valuation (i.e., price tolerance reviews, frequency, etc.)
7. Describe your management fee calculation and verification process.
8. Please describe your daily portfolio valuation capabilities / procedures.
 - a. How soon are daily valuations available to clients?
 - b. Is there additional cost for daily valuations?
9. Describe how you handle GASB and GAAP accounting / reporting requirements.
10. Describe your cash availability and cash forecast reporting.
11. Describe your cash reconciliation procedures.
12. Describe your position reconciliation procedures.
 - a. Provide a description of current reporting capabilities and please address the following questions/requests What is the lag time between trade execution, availability of online transaction data to the client, and posting of the transaction data to your accounting system?
 - b. Provide sample reports
 - c. Is the system available 24 hours a day?
 - d. Are there any reports / systems that are not available via the web?
 - e. Do clients have the ability to retrieve online information in a customized reporting format? If so, describe your custom reporting flexibility and limitations. Is the data compatible with MS Excel?
 - f. What is the retention period for accounting data?
13. Is your accounting system allocated dedicated hardware? If not, indicate the level of priority versus other systems sharing the same hardware.
14. How much of the firm's budget is allocated to technology enhancements, specifically systems that would be used for this service.
15. Is there a single client login for all service related data access?

16. Describe your systems development plans over the next three years that would be used for this service.

D. Proposed Service – Performance Calculation and Reporting

1. Describe how your firm interacts with investment managers.
2. Describe your performance platform.
3. Provide control environment documents for both systems and performance practices.
4. Please describe your daily performance capabilities / procedures.
 - a. How soon are daily performance returns available to clients?
 - b. Is there additional cost for daily performance?
5. Describe your performance reconciliation procedures with external managers.
6. Please describe benchmark licensing requirements/process.
7. What process do you follow when there is a significant cashflow in a performance period?
8. Describe the security level analytical data points available (ie Price/Earnings, Price/Book, Market Cap, Yield, Duration, Country of Risk, etc.)
9. Describe ability to also market value weight these security level analytical data points and roll up to the Total Fund, Asset Class, and individual account level is also preferred?
10. Describe the ability to capture an exchange traded security's issuer, parent, and ultimate parent?
11. Provide a description of current reporting capabilities and please address the following questions/requests
 - i. Is the data available real time?
 - ii. Provide sample reports
 - iii. Is the system available 24 hours a day?
 - iv. Are there any reports / systems that are not available via the web?

- v. Do clients have the ability to retrieve online information in a customized reporting format? If so, describe your custom reporting flexibility and limitations. Is the data compatible with MS Excel?
 - vi. What is the retention period for data?
12. Is your performance system allocated dedicated hardware? If not, indicate the level of priority versus other systems sharing the same hardware.
 13. How much of the firm's budget is allocated to technology enhancements, specifically systems that would be used for this service.
 14. Is there a single client login for all service-related data access?
 15. Describe your systems development plans over the next three years that would be used for this service.

D. Standards of Conduct

1. Does the firm have a 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. Does the firm have a written anti-discrimination policy? If so, attach a copy and state how the policy is monitored and enforced.
3. How does the firm identify and manage potential conflicts of interest?
4. Are there any potential conflicts of interest the firm would have in providing services to SERS? If yes, please explain.
5. List and describe any relationships and/or contacts the firm or its officers or employees have had with any SERS Retirement Board member and/or staff member within the last 12 months.
6. Has the firm or any officer, principal 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 may be found at: https://www.ethics.ohio.gov/education/factsheets/doing_business_with_retirement_systems_in_ohio.pdf
7. Has the firm or any officer, principal or employee given any remuneration or anything of value such 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.

8. Within the last five (5) years:
 - a. Has the firm, or any officer or employee of the firm, been a defending party in a legal proceeding before a court related to the provision of services?
 - b. Has the firm, or any officer or employee of the firm, been the subject of a governmental regulatory agency inquiry, investigation, or charge?
 - c. Has the firm submitted a claim to the firm's liability insurance carrier involving the type of services sought under this RFP?

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

E. Fees

1. Please submit copies of your current fee schedules for master record keeping / fund accounting services.
2. Provide a pro forma fee estimate based upon the services requested in this RFP. Please provide the following fee scenarios:
 - a. Daily audited full valuations
 - b. Monthly audited full valuations
3. List any additional services not listed in the above fee proposal that would be considered special and would otherwise incur additional fees.
4. Attach a sample contract.
5. Are you willing to entertain a fees at risk model?

F. SERS' TERMS AND CONDITIONS

1. Does the vendor agree to all terms and conditions provided in Appendix B?
2. If not, please provide any details as to the specific provisions and vendor's preferred language.

Appendix B

TERMS AND CONDITIONS

1. **Acceptance and Payment.**

Upon receipt by SERS of a proper invoice from Vendor, SERS shall pay any amounts not in dispute for Services identified in the invoice and accepted by SERS. The Vendor shall invoice SERS not more often than monthly. After completion of services described in the SOW, 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 Agreement or SOW, there shall be no additional amounts paid by SERS.

If billed at an hourly rate, each invoice shall provide the details for all Personnel who performed Services under this 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 Vendor shall submit invoices to SERS monthly during the term of this Agreement.

2. **Independent Contractor**

Vendor is an independent contractor, and nothing herein shall be construed to the contrary. Vendor shall not assume or create any obligations or responsibilities express or implied, on behalf of or in the name of SERS, or bind SERS in any manner or thing whatsoever without SERS's written consent. SERS shall neither have nor exercise disciplinary control or authority over Vendor. None of the employer-paid benefits provided by SERS to its own employees, including but not limited to retirement benefits, workers' compensation insurance and unemployment insurance, are available from SERS to Vendor. Individuals who are employed by Vendor are not public employees for purposes of OPERS membership. Vendor is not a public employer for purposes of Chapter 145 of the Ohio Revised Code. Vendor agrees to pay all applicable social security taxes, unemployment compensation taxes, income taxes and contributions required by any federal, state or local law with respect to Vendor for the services under this Agreement.

3. **Indemnification**

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

- b. Vendor 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 Vendor'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 Vendor and or its employees.
- c. Vendor agrees to defend at Vendor'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 Vendor or Personnel providing Services. Vendor 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.
- d. Vendor 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, Vendor 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 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, Vendor 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 Vendor, provided that such claim solely and necessarily is based on such combination, operation or use.

4. 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 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.

5. Ownership.

- a. All programs, documentation, specifications and any other technical information or work (collectively "Work") developed or prepared by Vendor 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 Agreement, Vendor 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. Vendor reserves no right or interest in the Work. Vendor 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. Vendor 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 Vendor retains no right or interest in the Work. This Section shall survive the termination of this Agreement regardless of the cause of termination.

- b. Vendor 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 Vendor secures all necessary licenses which are hereby assigned to SERS for such material.

6. **Representations and Warranties.** As of the Effective Date and at the time of execution of each SOW hereunder, the Vendor represents and warrants that it:

- a) Has the authority to enter into this 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 Agreement or otherwise, including, but not limited to, a finder's fee, cash solicitation fee, or a fee for consulting, lobbying or otherwise.
- f) Vendor represents that its goods and services do not infringe on any third-party copyright or ownership rights.

7. **Public Record Requests.** Vendor 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. Vendor 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. Vendor 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 Vendor's exempt information or data, SERS will refrain from disclosing the information or will make reasonable efforts to contact Vendor in sufficient time to allow Vendor 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, Vendor 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 Vendor. If as a result of the position taken by Vendor regarding the exempt status of the information SERS is assessed any damages or fees, Vendor shall indemnify SERS for such damages or fees.
8. **Cybersecurity Incident Notice and Reporting.** Vendor shall have policies and procedures in place for the effective management of cybersecurity incidents, as defined below, which shall be made available to SERS upon request. A "cybersecurity incident" means a cybersecurity event that has been determined to have an impact on the vendor prompting the need for response and recovery. This may include ransomware that may place SERS' data or SERS members' personal data at risk. "Personal data" means full legal name, date of birth, home address, email address, social security number, driver's license number, state identification card number, SERS account username, SERS account password, record of contributions or financial account numbers.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to the Agreement, in the event of any actual cybersecurity incident or reasonable belief of an actual cybersecurity incident the Vendor either suffers or learns of that either compromises or could compromise SERS' data, the Vendor shall notify SERS of the following within 48 hours of its discovery:

- a) The date and time of the discovery of the cybersecurity incident.
- b) The name of the Vendor cybersecurity incident representative and contact information.

The Vendor shall provide the following information to SERS regarding a cybersecurity incident within a reasonable period of time:

- a) Date and time of the cybersecurity incident.
- b) Nature of the cybersecurity incident, including any potential impact on SERS' data or SERS members' personal data.
- c) Description of SERS' data or SERS members' personal data involved in the cybersecurity incident.
- d) Vendor action taken to mitigate the cybersecurity incident and secure compromised systems.

The Vendor shall cooperate with SERS and provide such other information, including a written report, as reasonably requested by SERS. Vendor shall analyze and document the incident and provide all notices required by all applicable laws, regulations, rules, and industry standards. SERS may, in its sole discretion, choose to provide notice to any or all parties affected by a cybersecurity incident but Vendor shall reimburse SERS for the cost of providing such notification. Vendor further agrees to provide or reimburse SERS for its costs in providing any credit monitoring or similar services that are necessary as a result of Vendor's cybersecurity incident.

In addition to any other indemnification obligations in the Agreement, the Vendor shall fully indemnify and save harmless SERS from any costs, loss or damage to SERS resulting from a cybersecurity incident or the unauthorized disclosure of SERS' data or SERS members' personal data by the Vendor, its officers, agents, employees, and subcontractors.

9. General.

- a. The Agreement shall be construed and enforced in accordance with the laws of the State of Ohio and any applicable federal laws.
- b. The Agreement is not assignable without the prior written consent of SERS. Any attempt by Vendor to assign any of the rights, duties, or obligations of this Agreement without such consent is void.
- c. The Agreement can only be modified by written agreement duly signed by persons authorized to sign agreements on behalf of SERS and of Vendor.
- d. Vendor 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 Agreement in press releases, advertising or materials distributed to prospective customers.