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**Board of Trustees of the
Public Safety Personnel Retirement System**

**Acting in their Capacity as
Administrators of the**

Public Safety Personnel Retirement System Trust

**REQUEST FOR PROPOSAL
For**

NON-DISCRETIONARY INVESTMENT CONSULTANT SERVICES

Submissions Due: 5:00 pm MST, October 29, 2021

**Arizona PSPRS Representative: Laura Long
TELEPHONE Number: 602-571-4343
E-MAIL: LLong@psprs.com**

REQUEST FOR PROPOSAL NON-DISCRETIONARY INVESTMENT CONSULTANT SERVICES

This Request for Proposal (“RFP”) is issued by the Board of Trustees (“Board”) of the Public Safety Personnel Retirement System (“System”), acting in their capacity as administrators of the Public Safety Personnel Retirement System Trust, for the purpose of hiring a non-discretionary investment consultant to provide non-discretionary investment consultant services. These services include providing industry knowledge across asset classes, research and assistance in identifying and vetting investment opportunities, and portfolio allocation guidance in an advisory capacity.

BACKGROUND INFORMATION

Established in 1968, the System manages three different defined benefit retirement plans that provide a guaranteed life-long pension benefit: the Public Safety Personnel Retirement System plan (PSPRS plan), the Corrections Officer Retirement Plan (CORP), and the Elected Officials’ Retirement Plan (EORP). As of June 30, 2020, 239 employers participated in these plans, and there were 59,387 members. The assets under management for these plans are about \$17 billion as of September 10, 2021. Plan assets are allocated to three asset classes: Capital Appreciation (67 percent policy target for investments in private equity, public equity, real estate, and real assets), Contractual Income (22 percent policy target for investments in private credit and core bonds), and Diversifying Strategies (10 percent policy target for investments in hedge funds and risk parity). Overall, the Public Safety Personnel Retirement System Trust (“Trust”) is invested in 232 drawdown funds and 15 hedge funds.

As fiduciaries to the Trust, the Board has delegated the authority to make investment decisions to the System’s Administrator. In 2008, the Board in consultation with the Administrator, contracted with non-discretionary investment consultants to assist with developing and maintaining a diversified investment portfolio that includes alternative investments. As fiduciaries and stewards of member monies, the Trustees and Administrator are undertaking a procurement to update the Trust’s use of non-discretionary investment consultant services.

Note: This procurement is for non-discretionary investment consultant services for the CIO and the Investment Team. The Board contracts with its own consultant, NEPC, to serve as its fiduciary consultant; the Board’s consultant contract is not up for bid.

SCOPE OF SERVICES

The System intends to contract with a non-discretionary investment consultant to assist the Trust’s investment team in maintaining the Trust’s assets and best execution of the Board’s Investment Policy Statement.

The successful proposer shall be required to and qualified to perform the following services:

1. *Strategic advice*—Work with the investment team to develop annual implementation plans for the Trust’s alternative asset classes. These plans should address the Trust’s return expectations, investment goals, market expectations, portfolio construction, risk budget, pacing, and commitment sizes for allocations. The plans should also take the Trust’s allocations to publicly-traded assets into consideration.
2. *Proprietary research and databases*—Provide the investment team with access to proposer’s internal proprietary alternative investments research and databases. Internal research and database resources should include:
 - a. Regularly-updated analyses of alternative asset classes’ investment marketplaces,

- including identification of trends and other factors that affect their terms and structures;
- b. Reports on emerging issues, proposed legislation, market trends, sectors, geographies, and new investment structures that are or could potentially affect alternative investments;
 - c. Reports of results of investment and operational due diligence (see 3c below);
 - d. Updates for material changes to investment and operational due diligence (see 3d below); and
 - e. Databases of investment managers' deal histories (for all alternative asset classes except hedge funds) that include portfolio metrics ILPA recommends for collection.
3. *New investment identification, review, and evaluation*—Assist the investment team with sourcing new funds and investments. Related activities include:
- a. Identifying investment managers that are raising funds and co-investments that are suitable for the Trust's asset allocation, capacity, risk budget, and statutory and/or regulatory mandates;
 - b. Identifying potential direct investments that are not part of a fund or made through a general partner;
 - c. Referring prospective investment managers to investment team staff for introductory meetings;
 - d. Fulfilling investment team member requests for written investment and operational due diligence for investment managers and funds sourced either by the investment team or proposer (see 4 and 5 below); and
 - e. Providing updates to investment and operational due diligence reports as material changes occur in an investment manager's investment strategy or operations.
4. *Operational due diligence*—Conduct operational due diligence, specifically:
- a. Assess all aspects of an investment manager's operations, including but not limited to: governance; litigation, regulatory actions, and criminal proceedings against the firm and principals; third-party service provider review; review of firm policies and procedures for business continuity, AML/KYC/ATR, conflicts of interest, and trading; assessment of monitoring and reporting capabilities; and assessment of middle- and back-office capabilities and internal controls for them;
 - b. Maintain written records of the operational due diligence review; and
 - c. Provide the investment team with a report that details the proposer's assessment of strengths and weaknesses in the firm's operations.
5. *Investment due diligence*—Conduct investment due diligence, specifically:
- a. Assess all aspects of an investment manager's investment program, including but not limited to: strategy; track record; investment process; investment team; and investment and/or risk committee membership and procedures;
 - b. Maintain written records of the investment due diligence review; and
 - c. Provide the investment team with a report that details the proposer's assessment of strengths and weaknesses in an investment manager's investment program.¹

¹ If reports include ratings, proposer should be willing to provide Trust investment staff with training in the ratings methodology, how it is applied, and when discretion indicates high ratings but trailing performance as compared to peers.

6. *Portfolio performance measurement and reporting*—Conduct performance reviews on a monthly and quarterly basis:
 - a. Proposer shall obtain monthly and quarterly data from the Trust’s investment managers, evaluate the accuracy of the provided information, and calculate returns in U.S. dollar terms;
 - b. For all alternative assets with the exception of hedge funds, quarterly reporting is to be completed about 90 days after each quarter’s close (or a reasonable time horizon) and will include the following elements:
 - i. Performance at the Trust, asset class, and individual holdings;
 - ii. Data on outstanding commitments, distributions, and valuations;
 - iii. Analysis of portfolio concentrations by industry, sub-strategy, and geography;
 - iv. Risk analysis; and
 - v. Summary review of valuations, returns, and activity on an individual fund and aggregate portfolio basis; significant valuation changes in funds and underlying portfolio companies; and general market conditions and their impact on the Trust’s portfolio.
 - c. For hedge funds, monthly reporting is to be completed about 30 days after each month’s close (or a reasonable time horizon) and should include the items in 6b above.
 - d. Reporting under subsection 6b and 6c should be in spreadsheet format.
7. *Back office support*—Occasionally, investment staff identify discrepancies between partner statements and custodian bank records. When this occurs, the proposer would be requested to provide back office support services. Tasks include, but are not limited to:
 - a. Reconcile cash flows to investment managers’ quarterly reports, including ownership percentage calculations;
 - b. Reconcile performance report with performance reporting by custodian bank; and
 - c. Respond to requests by custodian and Trust staff for review and resolution of transactional record keeping discrepancies between the proposer, GP, and custodian;
8. *Meetings*—Duties will require preparation for, attendance at, and participation in regularly-scheduled and *ad hoc* meetings. Costs of attending meetings shall be borne by the proposer. Virtual attendance is permitted for all meeting types with the exception of participatory attendance with board members present. For those, in-person attendance is encouraged but virtual attendance could be approved via prior CIO authorization. Meeting types include:
 - a. Non-participatory attendance at monthly board meetings. These may be attended virtually;
 - b. As requested, participatory attendance at monthly Board and Investment Committee meetings. Proposer would be on agendas to give presentations on written reports and be prepared to answer Trustee questions;
 - c. Investment staff may and likely will request that the proposer make consulting team staff available for discussions regarding strategy, planning, policy and procedure development, specific investments, asset allocation, execution details, and investment monitoring with the CIO, the investment team, and/or Trustees;
 - d. Leading monthly calls for each alternative asset class to discuss newly-sourced funds, ongoing due diligence for funds in the pipeline, monitoring invested funds, and market environment;
 - e. Making analysts available to meet with investment team members to discuss specific investment opportunities; and

- f. For each meeting type, the Board's fiduciary consultant, NEPC, will or may also be in attendance. Proposer is expected to work collaboratively and cooperatively with NEPC staff.
9. *Other projects as assigned*—The CIO may request the proposer complete special projects that would provide additional information or perspective on topics already under discussion.
10. *Operational consultation*—The CIO may request the proposer consult on best and other practices for similar institutional investors in areas such as due diligence procedures, compliance protocols, and team structure and composition.
11. *Activity reports*—Proposer will provide monthly reports to the CIO that summarizes its activity with respect to the new funds it has recommended, activities completed for funds in due diligence, and the status of projects assigned by the investment team. These reports should be accessible to the CIO and investment team via an online portal.

MINIMUM REQUIREMENTS

All proposals received on or before the proposal due date at the location specified in this solicitation will be evaluated to determine whether they meet the following minimum qualifications:

1. Proposers must have the capacity to provide all service requirements identified in this solicitation;
2. Proposers must have experience with providing all service requirements identified in this solicitation to public pension trusts with assets under management of at least \$10 billion; and
3. Proposers must have a verifiable history of activity and adequate resources to carry out the service requirements in this solicitation.

EVALUATION CRITERIA

The submittal will be evaluated based on the following criteria which will be based on written submissions and/or finalists' interviews. Interviews are not guaranteed to any proposing firm; therefore, all proposers should ensure that their written proposals contain all of the information that they wish to be considered for evaluation.

- 25 percent - Relevant knowledge and experience in similar consulting engagements, and current organizational capacity to provide experienced staff to perform the services outlined in the Scope of Services outlined in this solicitation.
- 30 percent - Quality and extent of the firm's capabilities regarding:
 - Strategic advice
 - New investment identification and evaluation
 - Operational due diligence
 - Investment due diligence
 - Manager performance reporting and monitoring
 - Back office support
- 25 percent - Demonstrated ability to meet service requirements, such as to communicate with the CIO and investment team, the Trustees, and the Board's consultant on both ongoing and special issues and to respond to concerns as they arise, including the operational plan for fulfilling its duties and the quality of professional staff assigned to this contract.

- 20 percent - Overall cost of firm's proposed services.

FORMAT AND CONTENT OF THE PROPOSAL

Proposals must include the information below, presented in a clear, comprehensive, and concise manner to illustrate the proposing firm's capabilities.

INSTRUCTIONS

Letter of Transmittal

The Letter of Transmittal should reflect the RFP subject matter, name and address of the firm providing services under the contract, contact person, phone number, email address and date of submission. The Letter of Transmittal must be signed by a person authorized to represent the firm and is legally responsible for the decision as to the price and supporting documentation provided as a result of this RFP.

Proposal

The proposal should follow the format shown below and provide all the information requested. The proposal must consist of the following sections:

1. Firm Background and General Descriptions
2. Understanding of the Scope of Services
3. Experience and Qualifications of Firm and Proposed Staff
4. Client References
5. Cost Proposal

Content for each of the sections is described below. The System reserves the right to verify any information provided in the RFP response, including, but not limited to, experience, education, and licenses of key personnel.

I. Company Background and General Description

- a. Provide organization name, address, and contact information.
- b. Provide a brief history of the firm including the year organized and ownership structure, including any material changes in structure, ownership, or management during the past three (3) years. Please indicate any anticipated changes in firm ownership, structure, or management.
- c. Provide an overview of the firm's organization, including the number of people in key positions and services offered, and the number of years the firm has provided services outlined in the Scope of Services section of this RFP.
- d. Clearly indicate if the firm is proposing to provide all of the services and roles indicated in the scope of services above, or if the firm is proposing to provide services for only specific services/roles.
- e. Describe the dollar levels of coverage for performance bonds, errors and omissions coverage and any other liability coverage which the firm carries.
- f. Describe any litigation, proceeding or investigation in the past 10 years related to the investment services provided by the firm, or an officer or principal of the firm, stating the cause of action and final result.
- g. If the firm, or an officer or principal of the firm, is debarred from participating in procurements or contracting with a unit of government or government entity in the United States, provide the name of governmental unit/entity, the period the debarment, and the circumstances surrounding the debarment.

- h. State and explain any Securities Exchange Commission (SEC), Financial Industry Regulatory Authority (FINRA), or other regulatory censure or litigation related to services the organization provides.
- i. Provide a brief description of any unique qualifications of the firm, including the firm's specialties, strengths and limitations. Provide examples of trust administration services rendered to other clients.
- j. Provide financial statements for the prior three years, or a statement indicating why financial statements are not available.
- k. Provide an affirmation that no conflicts of interest exist between the firm and the System, its Board, members or management. If a conflict of interest does exist, describe the conflict.
- l. If performing the role of an Investment Advisor, provide an affirmation that the firm and/or investment advisors assigned to this contract are registered with the appropriate federal or state entity.
- m. The System reserves the right to verify any information provided in the RFP response, including, but not limited to, experience, education, and licenses of key personnel and subcontractors.

2. Understanding of the Scope of Services Methodology

Provide a comprehensive narrative statement that illustrates an understanding of the requirements of the Scope of Services.

3. Experience and Qualifications

- a. Describe the firm's capabilities and recent experience in providing non-discretionary consulting services similar to those in the Scope of Services.
- b. Describe work experience conducted by the firm similar to the requirements of the Scope of Services.
- c. List all key professional personnel to be assigned to the performance of the contract, including any subcontractors. Résumés describing the qualifications of personnel assigned to the contract should include each person's name, highest degree held, position in the firm, total years with the firm, number of years in current role, type of related work experience, and, if performing services as an investment advisor, whether or not they are a registered investment advisor. For each, also indicate where they are based.
 - i. Substitutions for the listed individuals, including subcontractors, after the contract is signed will be allowed only when the substitutes have substantially the same qualifications or better qualifications than the person they replace.
 - ii. Notice shall be sent to the System for all changes to key personnel and subcontractors. System review and approval shall be timely and not unreasonably withheld. All changes will be deemed approved after 10 days unless otherwise communicated by the System.
- d. Describe specific procedures the firm would follow in the event key professional staff assigned to this account should leave the firm or be reassigned.
- e. State the work schedule (days and hours) that the assigned personnel will be available and the expected response time to employer requests.

4. Client References (Note: any references will be contacted at the discretion of the System or evaluation committee)

- a. Provide a list of at least five organizations that may be used as references for the firm's work related to the requirements in this RFP. The following should be included for the references listed:
 - i. Dates services were provided;

- ii. Name, address and phone number of an individual in the client organization who is familiar with the work performed; and
 - iii. Description of the work performed.
- b. Provide the name, address, phone number, contact name and title of any pension plan clients that have terminated the firm's services over the past three years. Provide an explanation of the circumstances involving the termination of services.

5. Cost Proposal

- a. Describe how fees are determined for the firm's services.
- b. If the proposed fee structure is a fixed bid, provide the fixed bid amount.
- c. If the proposed fee structure is not a fixed bid, provide a proposed fee structure with hourly rates for all individuals proposed to perform services under the Scope of Services section. In addition, please detail all additional expenses, along with a "not to exceed" amount for the first year of services.

LENGTH OF CONTRACT

It is anticipated that the contract will be offered for an initial term of three years, with two possible one-year extensions before it will be bid again.

PROPOSAL SUBMISSION

The deadline for proposal submission is 5:00 p.m. MST, Friday October 29, 2021. An electronic copy of the proposal should be sent to Laura Long, Senior Investment Analyst, at the following email address:

llong@psprs.com

A proposal may be withdrawn any time prior to the deadline by email notification, received no later than the deadline and signed by an authorized agent of the firm. The proposal may be resubmitted with modifications up until, but not after, the deadline. Inquiries seeking clarification as to intent or content of the RFP should be e-mailed to Laura Long, who is the sole point of contact for communications during the RFP process. (See Inquiries below for more information.)

Exceptions

If an offeror has any exceptions to any terms, conditions or material requirements of this solicitation including without limitation the Scope of Services, the offeror must include with its response a list of all exceptions to the requirements of the solicitation and any attachments stated on a separate page labeled "Exception Statement". Offeror must identify the reason for the requested change, provide alternate language and provide an explanation of the intent of the change. If Offeror's submittal does not include a separate Exceptions Statement identifying all of the above information regarding required exceptions, respondent will be deemed to have made no exceptions to the solicitation. Any exceptions listed in the response that do not specifically appear on the Exception Statement are deemed denied.

It is the intent of the System to award a contract on a fair, competitive basis. For this reason, the System may view any "Exception" in response to any material conditions or requirement of the solicitation, as an attempt by the Offeror to vary the terms of the solicitation which, in fact, may result in giving the Offeror an unfair advantage. For this reason, the System will, at its option, not allow exceptions to any material requirement if, in its opinion, the exceptions alter the overall intent of the solicitation, unless the exception would be of material benefit to the System. Additionally, the System may, at its option, deem any submittal non-responsive based on the exceptions by the Offeror.

Inquiries

All questions or issues related to this solicitation must be presented in writing. All questions that arise relating to this solicitation should be directed to the Representative listed on the cover page.

To be considered, written inquiries must be received at the Representative's email address on the cover page by 5:00 p.m. MST, Friday October 8, 2021. Inquiries received will then be answered in an addendum of Q&A provided to all offerors.

No informal contact regarding the solicitation initiated by respondents on the proposed services will be allowed with members of the System's staff and the Board from the date of the distribution of the solicitation until after the contract award.

TERMS AND CONDITIONS

1. The contract will be awarded to the firm that has submitted a proposal that is deemed to provide the best value to the System. Consideration will be given to demonstrated competence, knowledge, reputation, experience and qualifications of the firm as a whole and of the staff assigned to this contract; the adequacy of the proposal; quality and responsiveness of proposed methodology and approach; and the cost proposal. The System reserves the right to waive any defect or omission in any proposal which does not materially affect the terms of the response to this RFP. This RFP may also be found on the internet at www.psprs.com.
2. Discussions may be held with the firm(s) submitting proposals. The purpose of any such discussions would be to:
 - a. Promote the understanding of the System's requirements and the firm(s) proposals; and,
 - b. Facilitate arriving at a contract most advantageous to the System taking into consideration the System's needs, the cost of services to be provided and other evaluation factors set forth in the RFP.
3. The System reserves the right to conduct interviews with some or all of the firms that submit responses to this RFP.
4. Any contract resulting from the acceptance of a proposal shall contain, at a minimum, all applicable provisions of this RFP. At its option, the System may take either of the following actions in order to form an agreement between the System and the selected firm:
 - a. Accept a proposal by issuing a written "Notice of Award" to the selected firm, which incorporates the proposal documents by reference and accepts all or selected portions of the firm's proposal. This "Notice of Award" will represent a contractual obligation, and will be executed by the System and the authorized representative of the selected firm.
 - b. Enter into negotiations in an effort to reach a mutually satisfactory agreement, which would represent a contractual obligation that will be executed by both the System and the selected firm. Material changes to this RFP will only be permitted as part of the question and answer, and inquiry process before the final offer date and time. This agreement will be based on proposal documents, the submitted proposal, and the associated negotiations.
5. **Representations.** Contractor makes the following representations, which are agreed to be material to and form a part of the inducement for this Agreement:
 - a. Contractor has the expertise, support staff and facilities necessary to provide the Services described in this Agreement;

- b. Contractor does not have any actual or potential interests adverse to the Board of Trustees or the Plans nor does Contractor represent a person or firm with an interest adverse to the Board of Trustees or Plans with reference to the subject of this Agreement;
- c. Contractor shall diligently provide all required Services in a timely, ethical and professional manner and in accordance with the terms and conditions stated in this Agreement; and
- d. Contractor shall maintain its independence from the Plans' staff, any outside manager, and the System's actual and potential vendors, and shall take no action that frustrates or impairs Contractor's duty of loyalty to the Board of Trustees under this Agreement.
- e. By signing the final Offer and Acceptance Form that will be provided by the System during the last Phase, offerors attest that:
 - 1. The bid has been developed independently and that no consultation, communication, contract, arrangement or understanding has been made between the supplier/offeror and any competitor or potential offerors.
 - 2. Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of your offer.
 - 3. Offerors are required to disclose if the supplier/offeror, or any organization or person associated with your bid submission, including directors and senior managers, have been subject to proceedings related to anti-competitive conduct domestically or overseas in the past ten (10) years.
 - 4. The System reserves the right to report all suspected instances of anti-competitive practices, including bid rigging and collusion, and share bid information claimed by the offeror as confidential with the relevant competition authority.

6. Contract Order of Precedence

- a. **COMPLEMENTARY DOCUMENTS.** All of the documents forming the Contract are complementary. If certain work, requirements, obligations, or duties are set out only in one but not in another, Contractor shall carry out the work as though the relevant work, requirements, obligations, or duties had been fully described in all, consistent with the other documents forming the Contract and as is reasonably inferable from them as being necessary to produce complete results.
- b. **CONFLICTS.** In case of any inconsistency, conflict, or ambiguity among the documents forming the Contract and their provisions, they are to prevail in the following order, descending from most dominant to most subordinate, provided that, among categories of documents or provisions having the same rank, the document or provision with the latest date prevails. Information being identified in one document but not in another is not to be considered a conflict or inconsistency.
 - 1. Contract Amendments;
 - 2. The final Solicitation Documents, in the order:
 - a. Special Provisions;
 - b. Addendums to the Scope of Services;
 - c. Pricing Document;
 - d. Any other documents referenced or included in the Solicitation;
 - 3. Orders, in reverse chronological order; and
 - 4. Accepted Offer.

- c. **ATTACHMENTS AND EXHIBITS.** For clarity of intent, if an item was an Attachment in the Solicitation Documents or an Offer (either Initial, Revised, Best and Final, or Accepted) and was subsequently made into an Exhibit, or its content was incorporated into one of the other Contract documents, then that Attachment no longer exists contractually as an "Attachment" since it has at that point been made into some other Contract document. In every other case, an Attachment and the Contractor data therein remain part of the Accepted Offer for purposes of precedence and contractual effect.

7. **Amendments.** All offerors in the respective Evaluation Phase will be given notice of any amendments resulting from clarification discussions. Offerors will be required to acknowledge any amendments with signature via the form provided in form **Amendment Acknowledgement** and return to the System.

8. **Public Records.** Under the Arizona Public Records Law, materials received by the System may be considered public records. These records include but are not limited to bid or proposal submittals, agreement documents, contract work product, or other material associated with a bid. Bids will be confidential during the RFP process. The procurement file, including proposals, becomes public after the award.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the System does so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the System agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Intent to Award is issued. If the System agrees in writing to hold requested information confidential it is the offeror's responsibility to submit a redacted copy. If challenged, the offerors are responsible for defending any claims of confidentiality. The system will provide notice of the challenge to the public records for the offeror to respond.

All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the System for five years after completion of the contract (ARS 35-214 and 35-215). Such records will be produced at a System office as designated by the System.

9. **Bid Duration.** Responses to this RFP and its associated pricing and bid details shall remain in effect for at least 150 days from the RFP due date, unless offeror withdraws the RFP response and any associated materials in writing.

10. **Protest of Award.** An offeror who wishes to protest an error apparent in the RFP or apparent in the solicitation process before the RFP response due date must submit the protest in writing to the RFP's contact listed in this document before the RFP response due date. No protests related to the RFP shall be accepted after the RFP response due date.

An offeror who wishes to protest the award of a contract must submit the protest to the RFP's contact listed in this document within ten days after the date the Notice of Intent to Award the contract is issued. Only those offerors who submitted a proposal have standing to protest the proposed award of a contract.

All offerors will be notified of any protest. The protests will be conducted in accordance with the System's governance manual and approved procurement policies.

11. **Subcontract.** The Provider is prohibited from subcontracting, assigning, transferring, conveying, subletting or otherwise disposing of this agreement or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the

prior written consent of the System. All approved assignments, subletting or other transfers referred to herein must abide by the provisions of the contract.

12. **Contractor Licenses.** Contractor shall maintain current all federal, state and local licenses and permits required for the operation of its business in general, for its operations under the Contract, and for the work itself.
13. **Assignment.** Contractor shall not assign or transfer its interests, duties or responsibilities in or to this Agreement, or any part hereof, without the Board of Trustees' prior express written consent. Contractor shall not assign any monies due or which become due to Contractor under this Agreement without the Board of Trustees' prior express written consent.
14. **Negation of Partnership/Employment.** In the performance of all Services under this Agreement, Contractor shall be, and acknowledges that Contractor is, in fact and law, an independent contractor and not an agent or employee of the Board of Trustees or Plans. Contractor has and retains the right to exercise full supervision and control of the manner and methods of providing Services to the Board of Trustees and Plans under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of Services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, of whatever nature, and compliance with any and all other laws regulating employment.
15. **Indemnification.** Contractor shall indemnify, protect, defend and hold harmless the Board of Trustees and Plans, including all individual Board of Trustee Members, Administrators, Assistant Administrators, members, beneficiaries, officers, officials, employees, local boards, lawyers and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (each a "Loss" and collectively, "Losses") arising from any act, omission, fault, negligence or willful misconduct committed by Contractor in connection with its performance of the Services. Contractor acknowledges and agrees that its obligation to indemnify and defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Contractor.
 - a. This indemnification shall survive the termination of the Contract with the Contractor.
16. **Insurance.** Contractor, in order to protect the Board of Trustees and Plans, including all individual Board of Trustees Members, Administrators, Assistant Administrators, members, beneficiaries, officials, agents, officers, local boards, employees and lawyers, against all claims and liability for death, injury, loss and damage as a result of Contractor's actions in connection with the performance of Contractor's obligations, as required in this Agreement, shall secure maintain and provide evidence of insurance with certificates of insurance (valid ACORD form or equivalent approved by the System) as described below, prior to commencement of work. The Contractor's insurance shall be primary insurance with respect to all other available sources.
 - a. Contractor shall not perform any Services under this Agreement until Contractor has obtained all insurance required under this Section. Contractor shall pay any premiums, deductibles and self-insured retentions under all required insurance policies. Applicable to all insurance policies and coverages listed in the insurance provisions of this contract,

Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changes for any reason without thirty (30) days prior written notice to THE System,

- I. Contractor shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:
 - b. Commercial General Liability insurance, including, but not limited to, Contractual Liability insurance (specifically concerning the indemnity provisions of this Agreement), Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under this Agreement. Said insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of one million U.S. dollars (\$1,000,000.00) each occurrence and two million U.S. dollars (\$2,000,000) aggregate.
 - c. Automobile Liability insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with minimum limits for Bodily Injury and Property Damage liability of five hundred thousand U.S. dollars (\$500,000) each occurrence and one million U.S. dollars (\$1,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.
 - d. Professional Liability and/or Errors & Omissions insurance covering claims of professional negligence with minimum limits of one million U.S. dollars (\$1,000,000) each occurrence and five million U.S. dollars (\$5,000,000) aggregate. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract; and, either continuous coverage will be maintained or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.
 1. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this Contract.
 2. Contractor shall maintain the above-stated insurance coverages until the completion of all of Contractor's obligations under this Agreement. Such insurance coverages shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the Board of Trustees. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
- e. **Network Security, Cyber Security and Privacy Liability.** Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks related to delivery of services within scope of this RFP (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic

data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

1. Each Claim: two million U.S. dollars (\$2,000,000)
 2. Annual Aggregate: two million U.S. dollars (\$2,000,000)
 3. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- f. The Policy/ies shall be endorsed, as required by this written agreement, to include the System and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
 - g. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the System and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
 - h. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621.E.
 - i. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
 - j. Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. Such insurance coverages shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the System. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
 - k. On insurance policies where the System is named as an additional insured, The System is an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
 - l. For each insurance policy required by the insurance provisions of this Agreement, the Contractor must provide to the System, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, hand delivered or sent by facsimile transmission to the System contact above.
 - m. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The System in no

way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- n. Contractor must furnish the System with certificates of insurance (ACORD form or equivalent approved by the System) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the System before work begin. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the contract. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.
 - o. All certificates required by this Agreement must be sent directly to the System's contact person. The System's contract number and contract description must be noted on the certificate of insurance.
 - p. The System reserves the right to require certified copies of insurance policies required by this Agreement at any time.
 - q. Any modification or variation from the insurance requirements in this Agreement must be made by the System's legal counsel, whose decision is final. Such action may be made by administrative action with no need for contract amendment.
 - r. The System in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.
17. **Termination.** The System may, at its election, terminate this Agreement by written notice (a "30 Day Notice of Termination"). A 30 Day Notice of Termination will be deemed effective thirty (30) days after personal delivery or delivery by courier. Upon termination of this Agreement pursuant to a 30 Day Notice of Termination, Contractor shall be paid only that portion of the Annual Fee owed for the month in which the termination is effective; the balance, if any, of the Annual Fee for any remaining months of the year, shall be waived, and the Board of Trustees and Plans shall have no liability therefore. The Board of Trustees may terminate this Agreement immediately, without notice and without further obligation to the Board of Trustees or Plans, if the Board of Trustees reasonably believes Contractor is in default of any provision of this Agreement.
18. **Ownership of Documents.** All documents, pamphlets, brochures, books, data compilations, reports, materials and films, web presentations, recordings, broadcasts, and materials of every form and description, whether in written, analog, digital, film or electronic form, prepared by Contractor (or its agents) pursuant to this Agreement or in connection with the performance of the Services and delivered to the Board of Trustees and Plans, as well as all documents or information provided Contractor by the Board of Trustees and Plans (collectively, the "Materials") are and shall remain the property of the Board of Trustees and Plans, unless the parties agree otherwise, in writing. The Board of Trustees and Plans shall have no obligation to return the originals or copies of the Materials to Contractor upon termination of this Agreement.

- a. Pursuant to A.R.S. §§ 35-214 and 35-215, the System shall retain all business records relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State of Arizona at reasonable times. Upon request, the Contractor shall produce the original of any or all such records at the offices of the Client free of charge.

19. **Notices.** All notices required or provided for in this Agreement shall be provided to the parties hereto at the following addresses. A 30 Day Notice of Termination shall be delivered by personal delivery or delivery by courier. All other notices may be delivered by personal delivery, delivery by courier, U.S. mail, or private express mail service such as Federal Express. Notices delivered personally or by courier shall be deemed received upon receipt; notices which are mailed by U.S. mail or private mail service shall be deemed received five (5) days after mailing. A party may change the address to which notice is to be given by giving notice to the other party, as provided above.

To The System:

Mike Townsend, Administrator
Public Safety Personnel Retirement System
3010 E. Camelback Road, Suite 200
Phoenix, Arizona 85016

To The Contractor:

- 20. **Sole Agreement.** This document, which includes Exhibit I, contains the entire agreement of the parties hereto relating to the Services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.
- 21. **Authority to Bind Plans.** Except as otherwise authorized herein, it is understood that in Contractor's performance of any and all duties under this Agreement, Contractor has no authority to bind the Board of Trustees or Plans to any agreements or undertakings.
- 22. **Modifications of Agreement.** This Agreement may be modified only by a writing signed by both of the parties hereto.
- 23. **Nonwaiver.** No covenant or condition of this Agreement can be waived except by the written consent of the party adversely affected by such waiver. Forbearance or indulgence by either party hereto in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed. Either party hereto shall be entitled to invoke any remedy available to them under this Agreement or by law or in equity despite any forbearance or indulgence.
- 24. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed and enforced pursuant to the laws of the State of Arizona, without regard to choice of law principles. The venue for all litigation or other disputes relative to this Agreement shall be Phoenix, Arizona.
- 25. **Confidentiality.** Contractor shall not, without the written consent of the Board of Trustees, communicate confidential information, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any

third party in the same manner that Contractor protects its own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive. Contractor's obligation of confidentiality will not apply to information that (a) is or becomes available from public sources through no breach of Contractor's obligations hereunder; (b) is already in Contractor's possession without an obligation of confidentiality; (c) is rightfully disclosed to Contractor from a third party without an obligation of confidentiality; or (d) is required to be disclosed by court or regulatory order, provided Contractor gives the Board of Trustees prompt notice of any such order.

26. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to the Board of Trustees or to Contractor is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.
27. **Severability.** Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of Arizona, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.
28. **Captions and Interpretation.** Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party hereto because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties. The Recitals set forth in this Agreement are hereby incorporated into and made part of this Agreement.
29. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
30. **Nondiscrimination.** In accordance with ARS § 41-1461, et seq, Contractor shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. Contractor shall comply with the Americans with Disabilities Act.
 - a. Neither Contractor, nor any officer, agent, employee, servant or sub-agent of Contractor, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly or through contractual or other arrangements.
 - b. The Contractor shall comply with Executive Order 2009-9, which mandates that all persons, regardless of race, color, religion, sex, age, or national origin not mentioned in Order shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Company shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

- c. Compliance requirements with applicable immigration laws.
 - i. The Contractor warrants compliance with all applicable Federal and state immigration laws and regulations relating to employees and further warrants, to the extent that it has business operations located within the State of Arizona, that it complies and shall comply through the term of the Agreement with Section A.R.S. § 23-214, Subsection A. (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.”)
 - ii. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the Agreement.
 - iii. This agreement attests that to the best of its knowledge, the company is not currently engaged in, and agrees for the duration of this agreement, to not engage in a boycott of the state of Israel.
 - iv. The Client retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the Contractor or any subcontractor is complying with the warranty above.

31. **Non-Collusion Covenant.** Contractor represents and agrees that it has not entered into any contingent fee arrangement with any firm or person concerning this Agreement, nor has Contractor received any incentive or special payment from the Board of Trustees or Plans or any other person apart from the consideration specified in this Agreement.

32. **Signature Authority.** Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. If any court or administrative agency determines that the Board of Trustees does not have authority to enter into this Agreement, the Board of Trustees and Plans shall not be liable to Contractor or any third party by reason of such determination or by reason of this Agreement.

33. **Attorneys’ Fees.** The prevailing party in any litigation arising out of or concerning this Agreement shall be awarded its reasonable attorneys’ fees and all costs and expenses of litigation, whether those fees and costs are incurred at trial or on appeal or in connection with any mediation or court-ordered arbitration. Such an award shall be made for the prevailing party and against the non-prevailing party by the court or arbitrator adjudicating the litigation and not a jury.

34. **Arbitration.** As required by A.R.S. § 12-1518(B), the parties agree that, before filing any lawsuit, they will use non-binding arbitration in all disputes arising out of this Agreement which are subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133. The parties shall mutually agree on one neutral arbitrator, with each party paying half of any arbitrator’s fee. In the event the parties are unable to agree on one neutral arbitrator, each party shall nominate one neutral arbitrator, and the two arbitrators nominated by the parties shall confer and appoint one neutral arbitrator to hear the dispute. Any neutral arbitrator selected pursuant to this section will be domiciled in Maricopa County, Arizona.

35. **Fiduciary Relation.** In accordance with Arizona law, Contractor acknowledges that in connection with its performance of the Services, it is a fiduciary of the Board of Trustees and Plans to the extent of its advice. As a fiduciary of the Board of Trustees and Plans, Contractor is obligated to exercise scrupulous good faith and candor in the performance of the Services, and

refrain from self-dealing or other acts which might benefit the Contractor at the expense of the Board of Trustees or Plan.

36. **Nonexclusivity.** Contractor understands and acknowledges that this Agreement is nonexclusive and is for the sole convenience of the Board of Trustees and Plans, who reserve the right to obtain like services from other sources for any reason.
37. **Cancelation.** The requirements of A.R.S. § 38-511 apply to this Agreement. The Client may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Client is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of Contractor with respect to the subject matter of this Agreement.
38. **Offshore Performance of Certain Work Prohibited.** Contractor shall only perform those portions of the Services that directly serve State or its clients and involve access to secure or sensitive data or personal client data within the defined territories of the United States. Unless specifically stated otherwise in the Scope of Services, this paragraph does not apply to indirect or overhead services, redundant back-up services, or services that are incidental to performance under the Contract. This provision applies to work performed by Subcontractors at all tiers.
39. **Force Majeure.**
 - a. **DEFINITION.** For this paragraph, “force majeure” means an occurrence that is (a) beyond the control of the affected party, (b) occurred without the party’s fault or negligence, and (c) something the party was unable to prevent by exercising reasonable diligence. Without limiting the generality of the foregoing, force majeure expressly includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, failures or refusals to act by government authorities, and, subject to paragraph 37. [*Performance in Public Health Emergency*], declared public health emergencies. Force majeure expressly does not include late delivery caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, late performance by a Subcontractor unless the delay arises out of an occurrence of force majeure, or inability of either Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
 - b. **RELIEF FROM PERFORMANCE.** Except for payment of sums due, the parties are not liable to each other if an occurrence of force majeure prevents its performance under the Contract. If either party is delayed at any time in the progress of their respective performance under the Contract by an occurrence of force majeure, the delayed party shall notify the other no later than the following working day after the occurrence, or as soon as it could reasonably have been expected to recognize that the occurrence had effect in cases where the effects were not readily apparent. In any event, the notice must make specific reference to this paragraph specifying the causes of the delay in the notice and, if the effects of the occurrence are on-going, provide an initial notification and thereafter the delayed party shall provide regular updates until such time as the effects are fully known. To the extent it is able, the delayed party shall cause the delay to cease promptly and notify the other party when it has done so. The parties shall extend the time of completion by Contract Amendment for a period equal to the time that the results or effects of the delay prevented the delayed party from performing.
 - c. **EXCUSABLE DELAY IS NOT DEFAULT.** Failure in performance by either party will not constitute default hereunder or give rise to any claim for damages or loss of anticipated

profits if and to the extent that such failure was or is being caused by an occurrence of force majeure.

- d. **DEFAULT DIMINISHES RELIEF.** Entitlement to relief from the effects of an occurrence of force majeure is diminished to the extent that the delay did or will result from the affected party's default unrelated to the occurrence, in which case and to that extent the other party's normal remedies and the affected party's obligations would apply undiminished.

36. **Performance in Public Health Emergency.** Contractor warrants that it will:

- a. have in effect promptly after commencement a plan for continuing performance in the event of a declared public health emergency that addresses, at a minimum: (a) identification of response personnel by name; (b) key succession and performance responses in the event of sudden and significant decrease in workforce; and (c) alternative avenues to keep sufficient product on hand or in the supply chain; and
- b. provide a copy of its current plan to The System within 3 (three) business days after The System' written request. If Contractor claims relief under paragraph 32. [*Force Majeure*] for an occurrence of force majeure that is a declared public health emergency, then that relief will be conditioned on Contractor having first implemented its plan and exhausted all reasonable opportunity for that plan implementation to overcome the effects of that occurrence, or mitigate those effects to the extent that overcoming entirely is not practicable.

For clarification of intent, being obliged to implement the plan is not of itself an occurrence of force majeure, and Contractor will not be entitled to any additional compensation or extension of time by virtue of having to implement it. Furthermore, failure to have or implement an appropriate plan will be a material breach of contract.

37. **Transition.** During commencement, Contractor shall attend transition meetings with any outgoing vendors to coordinate and ease the transition so that the effect on State's operations is kept to a minimum. State may elect to have outgoing vendors complete some or all of their work or orders in progress to ease the transition as is safest and most efficient in each instance, even if that scope is covered under the Contract. Conversely, State anticipates having a continued need for the same materials and services upon expiration or earlier termination of the Contract. Accordingly, Contractor shall work closely with any new (incoming) vendor and State to ensure as smooth and complete a transfer as is practicable. State's representative shall coordinate all transition activities and facilitate joint development of a comprehensive transition plan by both Contractor and the incoming vendor. As with the incoming transition. State may permit Contractor (outgoing) to complete work or orders in progress to ease the transition as is safest and most efficient in each instance.

38. **Data Protection and Confidentiality of Information.** Contractor warrants that it will establish and maintain procedures and controls acceptable to the System for ensuring that the System's proprietary and sensitive data is protected from unauthorized access and information obtained from the System or others in performance of its contractual duties is not mishandled, misused, or inappropriately released or disclosed. For purposes of this paragraph, all data created by Contractor in any way related to the Contract, provided to Contractor by the System, or prepared by others for the System are proprietary to the System, and all information by those same avenues is the System's confidential information. To comply with the foregoing warrant:

- a. Contractor shall: (a) notify the System immediately of any unauthorized access or inappropriate disclosures, whether stemming from an external security breach, internal breach, system failure, or procedural lapse; (b) cooperate with the System to identify the source or cause of and respond to each unauthorized access or inappropriate disclosure; and (c) notify the System promptly of any security threat that could result in unauthorized access or inappropriate disclosures; and
 - b. Contractor shall not: (a) release any such data or allow it to be released or divulge any such information to anyone other than its employees or officers as needed for each person's individual performance of his or her duties under the Contract, unless the System has agreed otherwise in advance and in writing; or (b) respond to any requests it receives from a third party for such data or information, and instead route all such requests to the System's designated representative.
39. **Right to Offset.** The System shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the System, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.
40. **Nonconformance with Agreement.** Services provided under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the System may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
41. **Suspension or Debarment.** The System may, by written notice to the Contractor, immediately terminate this Contract if the System determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the contractor shall immediately notify the System.
42. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
43. **Accuracy of Work.** Contractor is responsible for the accuracy of the Services, and shall promptly make all necessary revisions or corrections resulting from errors and omissions on its part without additional compensation. Acceptance by State will not relieve Contractor of responsibility for correction of any errors discovered subsequently or necessary clarification of any ambiguities.
44. **Non-Availability of Funds –** Every payment obligation of the System under the Contract is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the System at the end of the period for which funds are available. No liability shall accrue to the System or State of Arizona in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

DISCLAIMER

The System is not under any obligation to accept the lowest bid or lowest fee or, indeed, choose any of the respondents to this RFP for an engagement; and the System may employ any criteria it deems appropriate, whether or not referenced in this RFP, in evaluating the proposals submitted.