



Proposed Contract for RFP No. 2017-8368

Professional Actuarial Services Spring-Fed Pool

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- A. Statement of Work**
- B. List of Key Persons and Resumes**
- C. CalPERS Contract-Related Disclosure Form**
- D. CalPERS Gift Policy**

SERVICE PROVISIONS

1. Services to be Provided

Contractor agrees to provide the California Public Employees' Retirement System ("CalPERS") professional actuarial services in accordance with the terms and conditions set forth herein and as detailed in Attachment A, Statement of Work, which is attached hereto and by this reference incorporated herein.

2. Key Persons

- A. Attachment B, List of Key Persons and Resumes, contains a resume for each individual who is authorized to perform services under this Agreement. These personnel are referred to in this Agreement as "Key Persons."
- B. Individuals not listed in Attachment B shall not perform services without CalPERS' prior written approval. Contractor shall not substitute, replace or reassign a Key Person without CalPERS' prior written approval.

3. Changes in Control, Organization, or Key Persons

- A. Contractor shall promptly, and in any case within five (5) calendar days, notify CalPERS in writing:
 - (i) if any of Contractor's representations and warranties, as set forth in this Agreement, cease to be true at any time during the term of this Agreement;
 - (ii) of any proposed change in Key Persons;
 - (iii) of any change in the majority ownership, control, or business structure of Contractor; or,
 - (iv) of any other material change in Contractor's business, partnership or corporate organization.
- B. All notices under this provision shall contain sufficient information to permit CalPERS to evaluate the changes. Contractor agrees to immediately provide CalPERS with such additional information as CalPERS may request with respect to any such change.

4. Term of Agreement

The term of this Agreement shall commence on November 1, 2018, or upon execution of the Agreement by all parties, whichever date is later, and end on October 31, 2023, unless terminated earlier in accordance with this Agreement.

BUSINESS TERMS

Definitions:

“Deliverables” means goods, software, hardware, information technology, telecommunications technology, and other items (e.g., reports) to be delivered pursuant to this Agreement, including any such items furnished incident to the provision of services.

“Documentation” means non-proprietary manuals and other printed materials necessary or useful to CalPERS. Manuals and other printed materials customized for CalPERS hereunder constitute Documentation only to the extent that such materials are described in or required by the applicable Statement of Work, Service Level Agreement or Letter of Engagement.

5. Rights in Work Product

- A. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Agreement including papers, reports, charts, computer programs, and other documentation of improvements thereto, and including Contractor's administrative communications and records relating to this Agreement (collectively, the "Work Product") shall be Contractor's exclusive property. The provisions of this subsection A may be revised in a Statement of Work.
- B. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Agreement or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Agreement constitute Work Product, but other elements do not. Nothing in this section will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- C. CalPERS will have Government Purpose Rights to the Work Product, as well as to any Pre-Existing Materials intended to be used with the Work Product, delivered to CalPERS hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product as well as any Pre-Existing Materials intended to be used with the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product and applicable Pre-Existing Materials outside CalPERS for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product and the applicable Pre-Existing Materials for any State government purpose. Such recipients of the Work Product and applicable Pre-Existing Materials may include, without limitation, the State, contractors, California local governments, the U.S. federal government, and other states and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product or applicable Pre-Existing Materials for any commercial purpose.

- D. Any Work Product developed by Contractor and designated confidential by CalPERS shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are utilized by CalPERS to protect such sensitive and confidential information. The identification of all such confidential data and information, as well as CalPERS' procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by CalPERS in writing to Contractor.
- E. Any data or other materials furnished by CalPERS for use by Contractor in connection with the services to be performed under this Agreement shall remain the sole property of CalPERS and shall be used by Contractor solely for performing its obligations under this Agreement.
- F. The ideas, concepts, know-how, or techniques relating to computer systems, developed during the course of this Agreement by Contractor or jointly by Contractor and CalPERS may be used by either party without obligation of notice or accounting.
- G. This Agreement shall not preclude Contractor from developing materials outside this Agreement that are competitive with the Work Product, irrespective of their similarity to materials which might be delivered to CalPERS pursuant to this Agreement, provided such materials are not developed in breach of Contractor's obligations pursuant to this Agreement.

6. Attorneys' Fees and Costs

In any litigation between the parties arising from or related to this Agreement, the non-prevailing party will pay the prevailing party's expenses incurred from such litigation, including reasonable attorneys' fees, allocated costs for services of in-house counsel, and court costs. These expenses shall be in addition to any other relief to which the prevailing party may be entitled.

7. Informal Dispute Resolution Process

- A. Except as set forth in subsection (B) of this section, if the parties' respective staff who are normally responsible for the administration of this Agreement are unable to resolve any dispute arising from or related to this Agreement within a reasonable time, the parties will attempt to resolve it by involving higher-level executives. In such a case, a high-level executive of each party will meet and confer in an attempt to resolve the dispute. The parties may engage a neutral third party mediator to assist in dispute resolution at either the staff or executive level, or both. If after expending reasonable efforts at executive level resolution of the dispute, the parties are unable to resolve it, either party may then pursue any rights and remedies that are otherwise available to it.
- B. CalPERS shall not be required to follow the dispute resolution process set forth in this section before: (i) issuing any notice of termination under this Agreement; or (ii) barring Contractor from further access to CalPERS' files, computer systems and premises.

8. Indemnification

Contractor shall indemnify, defend and save harmless the State of California, CalPERS, the CalPERS Board of Administration ("Board"), the California Public Employees' Retirement Fund, Public Employees' Long-Term Care Fund, Legislators' Retirement Fund, Judges' Retirement Fund, Judges' Retirement Fund II, Annuitants' Health Care Coverage Fund, Public Employees' Health Care Fund, State Peace Officers and Firefighters Defined Contribution Plan Fund, Public Agency Deferred Compensation Program, Replacement Benefit Fund, Supplemental Contributions Program Fund, Old Age & Survivors' Insurance Revolving Fund, Public Employees' Contingency Reserve Fund, Public Employees' Deferred Compensation Fund, and all of the officers, trustees, agents and employees of the foregoing, from and against any and all losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which:

- A. Arise out of or are due to a breach by Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement; or,
- B. Are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misconduct, gross negligence or reckless disregard of its duties under this Agreement; or,
- C. Accrue or result to or by any of Contractor's subcontractors, materialmen, laborers or any other person, firm or corporation furnishing or supplying services, material or supplies in connection with the performance of this Agreement.

9. Limitation of Liability

- A. Contractor's liability for damages to CalPERS for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to four times the Amount of Agreement as defined in Section 12 (Amount of Agreement).
- B. The foregoing limitation of liability shall not apply:
 - (i) To liability under the provision in this Agreement entitled "Intellectual Property in Deliverables; Intellectual Property Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
 - (ii) To claims covered by any specific provision herein calling for liquidated damages;
 - (iii) To claims arising under provisions herein calling for indemnification for third party claims against CalPERS for bodily injury to persons or damages to real or tangible personal property caused by Contractor's negligence or willful misconduct; or,
 - (v) To costs or attorneys' fees that CalPERS becomes entitled to recover as a prevailing party in any action.

- C. CalPERS' liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or tort, shall be limited to the Amount of Agreement. Nothing herein shall be construed to waive or limit CalPERS' sovereign immunity or any other immunity from suit provided by law.
- D. In no event will either Contractor or CalPERS be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except:
 - (i) To the extent that Contractor's liability for such damages is specifically set forth in the Services to be Provided (including the Statement of Work or any applicable Letter of Engagement); or,
 - (ii) To the extent that Contractor's liability for such damages arises out of subsection (B)(i), (B)(ii), or (B)(iv) above.

10. Intellectual Property in Deliverables; Intellectual Property Indemnity

- A. In case this Agreement calls for Deliverables that incorporate intellectual property, Contractor represents and warrants that it either owns or has the right and authority to grant to CalPERS the rights in such Deliverables stated in this Agreement for use in the U.S., without infringing the proprietary rights of others.
- B. Contractor shall: (i) indemnify and hold CalPERS harmless from any loss, damage or injury, (ii) defend at its own expense any and all suits and actions, and (iii) pay any judgments against CalPERS arising out of any alleged infringement of patent rights or copyrights enforceable in the U.S. or alleged misuse of trade secret information by such Deliverables. Contractor's indemnification obligations under this section are subject to Contractor receiving notice of the claim and being given the right to control the defense of such claim.
- C. Contractor will have no liability to CalPERS pursuant to this section to the extent that:
 - (i) The claim of infringement is based upon the use of the Deliverables in connection with or in combination with equipment, devices, or software not reasonably intended for use with the Deliverables, if the infringement would not have occurred but for that connection or combination;
 - (ii) The claim of infringement is based upon the use of software, provided by Contractor under this Agreement, in a manner for which the software was not designed, if the infringement would not have occurred but for that use;
 - (iii) The claim of infringement is based upon CalPERS' modification to any Deliverable or service provided by Contractor under this Agreement, if such infringement would not have occurred but for such modification; or,
 - (iv) The claim of infringement arises out of Contractor's compliance with proprietary specifications, requirements, or directions provided by CalPERS, and such infringement would not have occurred but for such compliance.

11. Inspection, Acceptance, and Rejection

Unless otherwise specified in the Statement of Work:

- A. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to CalPERS covering Deliverables and services under this Agreement and will tender to CalPERS only those Deliverables that have been inspected and found to conform to this Agreement's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to CalPERS during performance under this Agreement and for three (3) years after final payment. Contractor shall permit CalPERS to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices related to performance of the Agreement.
- B. All Deliverables may be subject to inspection and test by CalPERS or its authorized representatives.
- C. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to CalPERS. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- D. All Deliverables may be subject to final inspection, test, and acceptance by CalPERS at destination, notwithstanding any payment or inspection at source.
- E. CalPERS shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If CalPERS does not provide such notice of rejection within sixty (60) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by CalPERS will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that CalPERS might have at law or by express reservation in this Agreement with respect to any nonconformity.

FINANCIAL PROVISIONS

12. Amount of Agreement

Contractor is participating in a pool of potential Contractors and as such is not guaranteed any compensation or engagements under this Agreement. Any fees paid to Contractor shall be based on the terms of any Letter of Engagement that is awarded to Contractor. Upon execution of a Letter of Engagement, money will be internally transferred to fund the work and will not require an amendment to this Agreement.

13. Invoices and Payments

- A. CalPERS agrees to pay Contractor for authorized services provided in conformance with this Agreement upon its receipt of Contractor's invoices and supporting receipts. Contractor shall submit itemized invoices as needed. Invoices shall state in detail the services performed or goods supplied, the charges associated with each line item of services or goods, and whether Contractor is a targeted business enterprise (see Section 22).
- B. If CalPERS consents in writing to the use of a subcontractor for any part of the work as provided in Section 58, subcontracted work shall be itemized separately, identifying:
 - (i) The subcontractor; and
 - (ii) Whether the subcontractor is a Targeted Business Enterprise as that term is defined in Section 22.
- C. All invoices for payment shall be submitted in arrears for work already performed. No invoice may be submitted, and no payments will be made, for services not yet rendered, in whole or in part.
- D. Invoices should be sent, in triplicate, stating the Agreement Number to:

California Public Employees' Retirement System
Administrative Accounting
P.O. Box 942703
Sacramento, CA 94229-2703
Email: FCSD_AP_invoice@calpers.ca.gov
- E. CalPERS shall make payment to Contractor for performance under this Agreement as promptly as fiscal procedures permit, and in accordance with the terms of this Agreement. Payment is due to Contractor either 45 days from the date the services or Deliverables are received and accepted by CalPERS or 45 days from the date a correct invoice is received at the address set forth under 13.D above (or such other address as requested by CalPERS in writing), whichever is later. When provision is made for a testing period preceding acceptance by CalPERS, the date of acceptance shall be considered the date services or Deliverables are accepted by CalPERS during the specified testing period.

14. Taxes

CalPERS is exempt from federal excise taxes and shall not be required to make any payment for any personal property taxes levied on Contractor or any taxes levied on employee wages. CalPERS will pay for State or local sales or use taxes, if applicable, on the services rendered pursuant to this Agreement.

15. Budget Funding Provision

This Agreement is subject to the availability of funds to pay Contractor. If this Agreement overlaps CalPERS' fiscal years, CalPERS' monetary obligation under this Agreement in fiscal years subsequent to the one in which this Agreement is executed is subject to, and

contingent upon, the availability of funds budgeted for the purpose of this Agreement.

16. Use Tax Collection

In accordance with Public Contract Code Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise CalPERS of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of Public Contract Code Section 10295.1.

COMPLIANCE PROVISIONS

17. Protection of Information Assets

A. The following terms shall be given the meaning shown:

- (i) **"Information Assets"** means any proprietary, confidential or sensitive information regularly utilized in the conduct of either party's business and/or necessary to the operation of either party that is created, stored, transmitted, processed or managed on any hardware, software, network components, or any printed form.
- (ii) **"Disclosing Party"** means the party who sends Information Assets that it owns to the other party for the purposes outlined in this Agreement.
- (iii) **"Receiving Party"** means the party who receives Information Assets owned by the other.

B. The Receiving Party will not use any of the Disclosing Party's Information Assets for any purpose, except as set forth in this Agreement, or as otherwise required by law. Nothing contained in the previous sentence, however, shall require CalPERS to circumvent or ignore any applicable provisions of the California Public Records Act (Govt. Code §§ 6250 – 6276.48 et seq.).

C. The Receiving Party must take all reasonable and necessary steps to prevent the unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets. The Receiving Party must, at a minimum, use the same degree of care to protect the Disclosing Party's Information Assets that it uses to protect its own Information Assets.

D. The Receiving Party agrees not to disclose the Disclosing Party's Information Assets to anyone, except to employees or third parties who require access to the Information Assets pursuant to this Agreement, but only where such third parties have signed agreements regarding the Information Assets containing terms that are equivalent to, or stricter than, the terms of this section, or as otherwise required by law.

- E. The Receiving Party shall notify the Disclosing Party in writing of any unauthorized disclosure, modification or destruction of the Disclosing Party's Information Assets by the Receiving Party, its officers, directors, employees, contractors, agents or third parties. The Receiving Party shall make this notification promptly upon becoming aware of such disclosure, modification or destruction, but in any event, not later than four (4) business days after becoming aware of the unauthorized disclosure, modification or destruction. After such notification, the Receiving Party agrees to cooperate reasonably, at the Receiving Party's expense, with the Disclosing Party to remedy or limit the unauthorized disclosure, modification or destruction and/or its effects.
- F. The Receiving Party understands and agrees that the Disclosing Party may suffer immediate, irreparable harm in the event the Receiving Party fails to comply with any of its obligations under this section; that monetary damages will be inadequate to compensate the Disclosing Party for such breach and that the Disclosing Party shall have the right to enforce this section by injunctive or other equitable remedies.
- G. The provisions of this section shall survive the expiration or termination, for any reason, of this Agreement.

18. Permits and Licenses

- A. Contractor shall carry out its duties and responsibilities herein in accordance with, be limited in the exercise of its rights by, and observe and comply with, all federal, state, city and county laws, rules or regulations affecting services under this Agreement. Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the work contemplated in this Agreement.
- B. If Contractor is either a foreign or domestic corporation it must be in good standing and be qualified to do business in California currently and throughout the term of the Agreement.
- C. Contractor agrees to abide by applicable federal immigration laws, including providing H-1B LCA notices for any employee(s), consultant(s), and third-party contractor(s) provided by Contractor to CalPERS.

19. Reports and/or Meetings

- A. Contractor will provide oral or written progress reports as requested by CalPERS.
- B. Contractor will meet with CalPERS' staff and/or the CalPERS Board of Administration upon request to discuss the status of matters assigned to Contractor or to present findings, conclusions and recommendations.

20. Books and Records

Contractor shall keep accurate books and records in connection with its performance of this Agreement in a secure location at Contractor's office(s). Contractor shall ensure that books and records of subcontractors, suppliers, and other providers are also accurately

and securely maintained. All such books and records shall be available for inspection and copying by CalPERS and its representatives at any time upon thirty (30) days prior notice from CalPERS or such reasonable shorter notice period as contemplated in Section 21 (Examination and Audit).

21. Examination and Audit

- A. Contractor (and its parent, subsidiaries, affiliates, subcontractors and any other related parties that have relevant records) shall be subject to examination and audit by CalPERS, CalPERS' authorized representatives (Representatives), and the California State Auditor, during the term of this Agreement and for three (3) years after CalPERS' final payment to Contractor under this Agreement. Any examination or audit shall be limited to the performance of services under this Agreement, including, without limitation, the costs of administering this Agreement. Contractor shall cooperate fully with the California State Auditor (consistent with California Government Code section 8546.7), CalPERS, and their Representatives in connection with any examination or audit. On thirty (30) days prior notice for audits or examinations of a routine nature (and on reasonable shorter notice for non-routine audits or examinations), Contractor shall permit CalPERS, its Representatives and the California State Auditor, during normal business hours, to inspect, audit, and copy all financial statements, books, accounts, and records of Contractor and anything else in connection to this Agreement; including Contractor's performance against performance standards and the terms of this Agreement. Contractor will provide copies of any records or documents requested in connection with an audit or examination within thirty (30) days after request.
- B. Contractor will cooperate fully in the development of any corrective action plans that CalPERS determines to be necessary as a result of audit or examination. Contractor will research any discrepancies identified by CalPERS' auditors and report the results of this research to CalPERS within fifteen (15) state business days of the identification of the discrepancies. Any necessary adjustments, payments, or reimbursements shall be made promptly by the appropriate party.

22. Small Business and Disabled Veteran Business Enterprise Participation Goal

- A. If applicable, Contractor agrees that, as a Contractor of CalPERS, it will meet the requirements of the Board's policies which embrace section 10115, et seq. of the Public Contract Code regarding the three percent (3%) Disabled Veteran Business Enterprise (DVBE) participation goal for state contracts. Contractor has agreed to commit to three percent (3%) DVBE participation. DVBE is also referred to as "Targeted Business Enterprise."

If Contractor is a California Certified Micro Business, as the requirements for that status are set forth on the California Department of General Services website located at www.dgs.ca.gov, Contractor is exempt from the three percent (3%) DVBE participation goal for State contracts.

- B. Nothing shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

- C. Contractor agrees to provide CalPERS or its delegate with any information reasonably necessary to comply with the obligations set forth in the applicable provisions of Public Contract Code sections 10115, et seq. Upon reasonable notice, Contractor shall permit CalPERS or its delegate access to its premises during normal business hours to interview employees and to inspect and copy books, records, accounts, and other materials for the purpose of determining compliance with the applicable provisions of Public Contract Code sections 10115, et seq. and California Code of Regulations, Title 2, sections 1896.60, et seq. Contractor agrees to maintain such records for a period of three (3) years after final payment under this Agreement. Contractor further agrees to make this section applicable to all subcontracts entered into hereunder.

23. Small Business Participation and DVBE Participation Reporting Requirements

- A. If for this Agreement Contractor made a commitment to achieve small business participation, then Contractor must within sixty (60) days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code, § 14841.)
- B. If for this Agreement Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within sixty (60) days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code, § 999.5 subd. (d); Govt. Code, § 14841.)

24. Nondiscrimination

During the performance of this Agreement, Contractor and its subcontractors, as well as their agents and employees, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (including health impairments related to or associated with a diagnosis of cancer for which a person has been rehabilitated or cured), age (40 or over), marital status, use of family and medical care leave pursuant to federal law, and gender identity (in compliance with Public Contract Code section 10295.35). Contractor and subcontractors, as well as their agents and employees, shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors, as well as their agents and employees, shall comply with the provisions of the Fair Employment and Housing Act (Govt. Code § 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs., Title 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards

adopted by the awarding state agency to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990, subdivisions (a) through (f), set forth in Subchapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

25. Statement of Compliance – Nondiscrimination

Contractor, by signature hereto, certifies under penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code section 12990, subdivisions (a) through (f), and California Code of Regulations, Title 2, section 11100 et seq.

26. Child Support Compliance Act

For any contract in excess of \$100,000, Contractor:

- A. Recognizes the importance of child and family support obligations and will fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 commencing with section 5200 of Part 5 of Division 9 of the California Family Code; and
- B. Represents that to the best of its knowledge it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

27. Benefits for Domestic Partners

Contractor certifies, for contracts in excess of \$100,000, that it is in compliance with Public Contract Code section 10295.3 with regard to benefits for domestic partners.

28. Electronic Waste Recycling Act of 2003

The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

29. Sweatfree Code of Conduct

- A. Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to CalPERS pursuant to the Agreement have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code section 6108.
- B. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under subsection (A).

30. Recycling Certification

Contractor shall use, to the maximum extent economically feasible in the performance of the Agreement work, recycled products.

31. Priority Hiring Considerations

If this Agreement includes services in excess of \$200,000 and is not a consulting services contract, the Contractor shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid (under Welfare and Institutions Code § 11200) in accordance with Public Contract Code section 10353.

32. Drug-Free Workplace

Contractor certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The person's or organization's policy of maintaining a drug-free workplace;
 - (iii) Any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) Penalties that may be imposed upon employees for drug abuse violations.

- C. Every employee who performs services for CalPERS under the Agreement will:
- (i) Receive a copy of the company's drug-free policy statement; and,
 - (ii) Agree to abide by the terms of the company's statement as a condition of employment under the Agreement.

CalPERS may terminate the Agreement if the Contractor fails to comply with these requirements.

33. Americans with Disabilities Act and Section 508 of the Rehabilitation Act

Contractor, by signature hereto, certifies that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA, and with Section 508 of the Rehabilitation Act (29 U.S.C. § 794d et seq.).

Contractor is responsible for ensuring all products and services provided to CalPERS, including hosting services for electronic content, meet the accessibility requirements of the refreshed Section 508 and all the applicable provisions of the Information and Communication Technology (ICT) Standards and Guidelines. These standards incorporate by reference all of the requirements of Web Content Accessibility Guidelines 2.0 AA success criteria. CalPERS reserves the right to ask for proof of conformance or to perform testing on any solution to verify conformance.

34. National Labor Relations Board Certification

Contractor, by signature hereto, does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court which orders Contractor to comply with an order of the National Labor Relations Board.

35. Neutrality in Labor Organizing Activities

CalPERS recognizes the value of labor organizing and encourages the entities with which it contracts to demonstrate that they also value this principle by encouraging management neutrality in labor organizing activities.

To remain "neutral" means not to take any action or make any statement that will directly or indirectly state or imply any support for or opposition to the selection by the Contractor's employees of a collective bargaining agent, or preference or opposition to any particular union as a bargaining agent. Nothing in this section obligates or prohibits the Contractor from entering into private neutrality, labor peace or other lawful agreements with a labor organization seeking to represent or who currently represents the Contractor's employees.

36. Expatriate Corporations

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code sections 10286 and 10286.1, and is eligible to contract with CalPERS.

REPRESENTATIONS AND WARRANTIES**37. No Conflicts or Consents; Agreement Does Not Violate Law**

- A. Contractor represents and warrants that neither the execution of this Agreement by Contractor, nor the acts contemplated hereby, nor compliance by Contractor with any provisions hereof will:
- (i) Violate any provision of the charter documents of Contractor;
 - (ii) Violate any statute or law or ordinance or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Contractor; or,
 - (iii) Violate, or be in conflict with, or constitute a default under, or permit the termination of, or require the consent of any person under, any agreement to which Contractor may be bound, the violation of which in the aggregate would have a material adverse effect on the properties, business, prospects, earnings, assets, liabilities, or condition (financial or otherwise) of Contractor.

38. Due Organization

Contractor represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the State of its incorporation or organization and is authorized to do business in California.

39. Power and Authority

Contractor represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize its performance under this Agreement. Contractor has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for the services contemplated by this Agreement.

40. Signature Authorization

The person signing this Agreement on behalf of Contractor hereby warrants that he/she is an agent of Contractor and is duly authorized to enter into this Agreement on behalf of Contractor.

41. Assignment of Antitrust Actions

Pursuant to Government Code sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- A. In submitting a bid to CalPERS, the supplier offers and agrees that if the bid is accepted, it will assign to CalPERS all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under

the Cartwright Act (Chapter 2, commencing with § 16700, of pt. 2 of div. 7 of the Bus & Prof. Code), arising from purchases of goods, materials, or services by the supplier for sale to CalPERS pursuant to the solicitation. Such assignment shall be made and become effective at the time CalPERS tenders final payment to the supplier.

- B. If CalPERS receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from CalPERS any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by CalPERS as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- C. Upon demand in writing by the assignor, the assignee shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and:
 - (i) The assignee has not been injured thereby; or,
 - (ii) The assignee declines to file a court action for the cause of action.

42. Insurance Requirements

Contractor warrants that it carries adequate commercial general liability insurance, workers' compensation insurance, and other necessary insurance and shall maintain such insurance at levels reasonably acceptable to CalPERS in full force and effect during the term of this Agreement. Contractor agrees that it shall ensure CalPERS is provided at least thirty (30) days' prior written notice of cancellation, modification, or non-renewal of any policy coverage required hereunder; provided that, prior to any such cancellation, modification, or non-renewal, Contractor will have new insurance policies in place that meet CalPERS' insurance coverage requirements under this Agreement. In the event Contractor fails to keep in effect at all times the insurance coverage required by CalPERS under this Agreement, at such levels as CalPERS has deemed reasonably acceptable, CalPERS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

Prior to the Effective Date of this Agreement and upon CalPERS' written request, Contractor shall provide CalPERS with copies of the certificates of insurance and policy endorsements for all insurance coverage required by CalPERS under this Agreement, and shall not do anything to invalidate such insurance. All certificates and endorsements are to be received and approved by CalPERS before performance under the Agreement commences, and on an annual basis thereafter for the duration of the terms of this Agreement. Failure of CalPERS to enforce in a timely manner any of the provisions of this Section, including without limitation, the failure to request certificates of such insurance policies, shall not act as a waiver of any of these provisions or the required insurance policies. This Section shall not be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations imposed under this Agreement (including but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold the other harmless under this Agreement).

43. Contract-Related Disclosure Requirements

- A. Contractor will comply with California Code of Regulations (CCR) Title 2, section 559.1, Required Contract-Related Disclosures ("Disclosure Requirements"), and will cooperate with CalPERS' staff to meet Contractor's obligations under the Disclosure Requirements.
- B. Contractor represents and warrants that it has provided CalPERS with the Contract-Related Disclosure Form PERS01A0068 (the "Disclosure Form") (Attachment C), as described in CCR title 2, section 559.1 subdivision (b)(4), including all disclosures required by CCR title 2, section 559.1, at the time the Agreement is executed and that all information disclosed in the form is true, correct and complete as of the date Contractor signed it. If Contractor determines at any time subsequent to filing the Disclosure Form that the information disclosed has become inaccurate, untrue, incomplete or misleading, Contractor will notify CalPERS and provide CalPERS with an updated Disclosure Form within fourteen (14) calendar days of the date that Contractor knew or should have known of such defect in the information.

TERMINATION AND REMEDIES

44. Termination at CalPERS' Option

- A. CalPERS, in its sole discretion and for any reason or no reason, may terminate this Agreement at any time upon written notice to Contractor. In the event CalPERS terminates this Agreement, CalPERS will within a reasonable time thereafter pay Contractor for the reasonable value of satisfactory services performed in accordance with this Agreement prior to the termination at the rates specified in this Agreement, but not in excess of the Amount of Agreement.
- B. Upon receipt of any notice terminating this Agreement, Contractor shall immediately discontinue all services for CalPERS unless the notice directs otherwise.

45. Ancillary Issues Relating to Termination at CalPERS' Option

- A. In case CalPERS notifies Contractor of a termination of the Agreement at CalPERS' option in whole or in part, Contractor shall immediately discontinue all services affected by the notice unless the notice directs otherwise, and proceed with the following obligations, as applicable, without delay:
 - (i) Place no further subcontracts for materials, services, or facilities except as necessary to complete the continuing portion of the Agreement (if any);
 - (ii) Terminate all subcontracts to the extent they relate to the work terminated; and,
 - (iii) Settle all outstanding liabilities and resolve all termination settlement proposals arising from the termination of subcontracts.

- B. In case CalPERS terminates this Agreement in whole, and promptly after CalPERS pays Contractor all amounts due under this Agreement, CalPERS and Contractor shall execute mutual general releases and covenants not to sue; provided, however, that the CalPERS' release and covenant may exclude claims for return or destruction of any CalPERS' documents that Contractor had not returned or destroyed at the time the CalPERS' release and covenant was executed.
- C. CalPERS shall not characterize any termination of the Agreement at CalPERS' option as a termination for cause or default by Contractor.

46. Termination for Default

- A. CalPERS may, by two (2) calendar days written notice to Contractor, and without prejudice to any other of CalPERS' remedies, terminate this Agreement for any of the following reasons, each of which shall be considered an event of default under this Agreement:
 - (i) Contractor fails to fulfill its obligations under the Agreement;
 - (ii) Contractor fails to cure an inaccuracy or omission in Contractor's disclosure obligations under CCR, title 2, section 559.1, Disclosure Requirements, as required and within the timeframe described in Section 43 of this Agreement pursuant to section 559.1, subdivision (c);
 - (iii) CalPERS determines that Contractor's disclosures under CCR, title 2, section 559.1 contain a material inaccuracy or omission the Contractor knew or should have known existed; or,
 - (iv) Contractor fails to comply with CCR title 2, section 559.1 in any other way.
- B. If CalPERS determines, based on reliable information, that there is a substantial probability that:
 - (i) Contractor will be financially unable to continue performance under this Agreement; or,
 - (ii) Contractor will be in material breach of this Agreement in the next thirty (30) days:

CalPERS shall have the option to demand that Contractor provide CalPERS with a reasonable assurance of performance. Upon Contractor's receipt of such a demand from CalPERS, Contractor shall provide to CalPERS a reasonable assurance of performance responsive to CalPERS' demand. If Contractor fails to provide such an assurance within ten (10) days of CalPERS' demand, the failure shall constitute a default by Contractor justifying termination of the Agreement by CalPERS pursuant to this Section.

- C. In case Contractor is working on CalPERS' premises or has access to CalPERS' computer systems at the time CalPERS issues a notice of termination for default, CalPERS reserves the right to bar Contractor from further access to CalPERS' premises or computer systems immediately upon issuance of the notice.

- D. Upon receipt of any notice terminating this Agreement for default, Contractor shall immediately discontinue all services affected unless the notice directs otherwise. At CalPERS' sole discretion, CalPERS may offer an opportunity to cure any default(s) prior to terminating this Agreement for a default.

47. Remedies in Case of Contractor Default

- A. CalPERS shall have all rights afforded by law in case of Contractor default, including but not limited to:
- (i) Termination of this Agreement;
 - (ii) Reformation of this Agreement to lower the price, so as to reflect the value of services actually rendered, in case CalPERS elects to accept services that do not fully meet the requirements of this Agreement;
 - (iii) Recovery of CalPERS' damages caused by Contractor delay or non-performance;
 - (iv) Recovery of liquidated damages specified in this Agreement (if any) regardless of whether CalPERS terminates the Agreement for default; and,
 - (v) Specific performance of particular covenants made by Contractor hereunder.
- B. All remedies of CalPERS under this Agreement for Contractor default are cumulative to the extent permitted by law.
- C. In the event CalPERS terminates all or a portion of this Agreement for default by Contractor, CalPERS shall pay Contractor the lesser of:
- (i) The actual value to CalPERS of services satisfactorily performed in accordance with the Agreement prior to the effective date of the termination; and,
 - (ii) Contractor's documented direct costs for supplies and labor associated with the performance, plus a reasonable allocation of overhead, but not including any profit.

In no event shall any amounts paid hereunder exceed the Amount of Agreement.

- D. In the event of a termination for Contractor's default, CalPERS reserves the right to take over and complete the work by contract or other means. In such case, one element of CalPERS' recoverable damages shall be any additional cost above the Amount of Agreement incurred by CalPERS to complete the work.
- E. In case CalPERS incurs damages arising out of Contractor default, CalPERS may recover the damages by setting them off against amounts it owes Contractor under this Agreement. CalPERS may exercise its right of offset whether or not CalPERS elects to terminate this Agreement for Contractor default. In case CalPERS elects to terminate this Agreement for Contractor default and CalPERS owes a payment

to Contractor under Subsection C of this Section, CalPERS may offset its damages against the payment owing to Contractor.

- F. CalPERS shall be entitled to retain any amounts that CalPERS has properly withheld from invoices rendered by Contractor until final resolution of all claims by the parties against each other arising out of any Contractor default alleged by CalPERS.

48. Notice of Insolvency

Contractor shall notify CalPERS immediately in writing in the event that Contractor files any federal bankruptcy action or state receivership action, any federal bankruptcy or state receivership action is commenced against Contractor, Contractor is adjudged bankrupt, or a receiver is appointed. Should any such event occur, CalPERS may, pursuant to Section 44 (Termination at CalPERS' Option), terminate this Agreement.

49. Legal Challenges to the Basis of Termination by CalPERS

If any termination of this Agreement by CalPERS for Contractor's default is judicially determined to have been at CalPERS' option and not for Contractor's default, then CalPERS shall have no right to recover from Contractor any damages arising out of the termination, and CalPERS shall pay Contractor for satisfactory services rendered on the basis called for under this Agreement in case of a termination of the Agreement at CalPERS' option.

50. Effect of Termination

All duties and obligations of CalPERS and Contractor shall cease upon termination of this Agreement, except that:

- A. Each party shall remain liable for any rights, obligations, or liabilities arising from activities carried on by it under this Agreement prior to the effective date of termination.
- B. Any Information Assets furnished, and all copies thereof, will be returned promptly to the Disclosing Party or destroyed using reasonable measures to protect against unauthorized access to or use of the information in connection with its destruction, following the earlier of:
 - (i) The termination of this Agreement;
 - (ii) Receipt of a written request to return or destroy the Information Assets; or,
 - (iii) The termination of the business relationship between the parties.

If both parties agree that return or destruction of the Information Assets is not feasible, the Receiving Party will continue to extend the protections outlined herein to all Information Assets in its possession and will limit further use of that information to those purposes that make the return or destruction of the Information Assets not feasible. CalPERS reserves the right to inspect the storage, processes, and destruction of any Information Assets provided under this Agreement.

- C. Contractor shall cooperate fully to effect an orderly transfer of services to CalPERS or another contractor if requested by CalPERS.
- D. Any rights or obligations set forth in Sections 5 (Rights in Work Product), 6 (Attorneys' Fees and Costs), 7 (Informal Dispute Resolution Process), 8 (Indemnification), 10 (Intellectual Property Deliverables; Intellectual Property Indemnity), 12 (Amount of Agreement), 13 (Invoices and Payments), 17 (Protection of Information Assets), 20 (Books and Records), 21 Examination and Audit, 41 Assignment of Antitrust Actions), 44 Termination at CalPERS' Option), 45 (Ancillary Issues Relating to Termination at CalPERS' Option), 46 (Termination for Default), 47 (Remedies in Case of Contractor Default), 50 (Effect of Termination), 54 (No Benefit from Recommendations), 59 (Joint and Several Liability), [insert Section reference] (Publicity), 65 (Waivers), 66 (Severability), 67 (Incorporation of Amendments to Applicable Laws), 69 (Choice of Law), 70 (Evaluation of Contractor), 73 (Binding Effect), 75 (Ambiguities Not Held Against Drafter), 76 and (Entire Agreement/Incorporated Documents/Order of Precedence) shall survive the expiration or termination of this Agreement. Furthermore, any other provision of this Agreement that contemplates performance or observance subsequent to expiration or termination of this Agreement shall survive expiration or termination of this Agreement and continue in full force and effect.

51. Cumulative Remedies

The rights and remedies provided herein are cumulative and are not exclusive of any rights or remedies which any party may otherwise have at law or in equity.

CONTRACTOR AND PROCESS INTEGRITY PROVISIONS

52. Gift and Political Contributions Disclosure

- A. Contractor will comply with Government Code section 20152.5, as it exists and as amended by the Legislature and implemented by the Board from time to time, concerning gift and campaign disclosure policies. The existing code section states:

No matter involving any vendor or contractor in their individual or any other capacity shall be considered during a closed session on any transaction involving the system unless, prior to the closed session, a written disclosure has been submitted by the vendor or contractor of any campaign contributions aggregating two hundred fifty dollars (\$250) or more and any gifts aggregating fifty dollars (\$50) or more in value that the vendor or contractor has made during the preceding calendar year to any member of the board or any officer or employee of the system. Failure to disclose the campaign contributions and gifts shall provide the basis for disqualification of the contractor or the vendor.

- B. For any gift or contribution provided, the disclosure shall include the recipient; the date provided; the type of item provided (gift or type of contribution); a brief description of the item provided; and its approximate value.

- C. Contractor will also comply with CalPERS' Gift Policy, Attachment D to this Agreement, which may be amended, restated, or otherwise modified from time to time.

53. Conflict of Interest

- A. All actual and potential Conflicts of Interests of Contractor and each Key Person must be fully disclosed in writing. Contractor shall explain in writing how it proposes to manage or mitigate all potential or actual Conflicts of Interests of Contractor or any Key Persons. The disclosure requirements relating to Conflicts of Interests shall be interpreted broadly and in cases where Contractor is unsure whether an actual or potential Conflict of Interest actually exists, Contractor should nevertheless disclose the actual or potential Conflict of Interest of Contractor or any Key Person. Such disclosures must be updated as changes in status occur as required by the terms of the Agreement, or otherwise in accordance with CalPERS' policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such Agreement, but, in any event, no less than annually. In addition, at the time of an assignment or as soon thereafter as practicable, the Contractor shall disclose in writing all actual or potential Conflicts of Interest of the Contractor or any of its Key Persons related to such assignment.
- B. All disclosures shall conform to CalPERS' policy and or procedures relating to disclosure of Conflicts of Interest in effect during the term of such Agreement and shall be specific enough in detail to allow CalPERS to knowingly and intelligently analyze the actual or potential Conflict of Interest. Disclosures should be made to the CalPERS Deputy Executive Officer, Operations and Technology; General Counsel; and the Contract Manager.
- C. A "Conflict of Interest" includes those circumstances that create or have the potential to create an actual or reasonably perceived conflict with Contractor's and/or any Key Person's duty of exclusive loyalty to CalPERS. A Conflict of Interest includes personal Conflicts of Interests of any Key Person or any Key Person's spouse, domestic partner, or dependent children.
- D. In the event that Contractor or its Key Persons fail to disclose a Conflict of Interest and/or fail to receive a written waiver from CalPERS as required by this section, CalPERS, in its sole and absolute discretion, may charge Contractor up to five percent (5%) of the total Amount of Agreement as liquidated damages, which remedy is in addition to and not in lieu of any rights and remedies available to CalPERS herein, at law and in equity, such rights and remedies being cumulative and not exclusive.
- E. Contractor acknowledges that CalPERS is subject to the provisions of the Political Reform Act of California (Govt. Code § 81000 et seq., and all regulations adopted thereunder, including, but not limited to, Cal. Code Regs., Title 2, § 18700) and Contractor shall comply promptly with any requirement thereunder. If required by law, Contractor shall require its Key Persons named and later all substitutions thereto to file Statements of Economic Interests in compliance with CalPERS' Conflict of Interest Code (Cal. Code Regs., Title 2, § 560 et seq.).

- F. Contractor acknowledges that if its Key Persons are required to file a Statement of Economic Interests, they are subject to the ethics training requirement found at Government Code sections 11146 – 11146.4 that require new filers to satisfy the ethics training requirement within six (6) months of the commencement of the Agreement and at least once during each consecutive period of two (2) calendar years commencing on the first odd-numbered year thereafter.

54. No Benefit from Recommendations

- A. Contractor shall not directly or indirectly receive any benefit from recommendations made to CalPERS and shall disclose to CalPERS any personal investment or economic interest of Contractor which may be enhanced by the recommendations made to CalPERS.
- B. Consistent with Public Contract Code section 10365.5, neither Contractor, nor any of its subsidiaries, may submit a bid or be awarded a contract for the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed to be appropriate in the end product that Contractor provides under this Agreement.

55. Business Continuity Plan

During the term of the Agreement, Contractor shall maintain a Business Continuity Plan (BCP) documenting disaster recovery and business resumption strategies and shall test it at least annually and provide test plan and results to CalPERS. The BCP will provide emergency preparedness strategies, manual downtime procedures, and recovery logistics and strategies for all critical business units pertaining to CalPERS' assets. At the request of CalPERS, Contractor will make its BCP, or relevant subset thereof, available for review by CalPERS' staff. Contractor must provide separately, and maintain separately, the confidential emergency contact information for the key external manager and his/her alternate.

GENERAL PROVISIONS

56. No Assignment or Delegation by Contractor

Contractor may not assign any rights under this Agreement to any person or delegate any duties under this Agreement to any subcontractor or other person without the prior written consent of CalPERS.

57. Notice of Proceedings

Contractor shall promptly notify CalPERS in writing of any investigation, examination, or other proceeding involving Contractor, or any Key Person, commenced by any regulatory agency.

58. Subcontractors

- C. Contractor shall perform the work contemplated with resources available within its own organization except for subcontracted work identified in this Agreement. No other portion of the work pertinent to this Agreement shall be subcontracted without written authorization by CalPERS. The subcontractor must be mutually agreed upon in advance by both parties.
- D. Contractor shall require any subcontractor to agree to be bound by all provisions of this Agreement as applicable.

59. Joint and Several Liability

If Contractor is a joint venture between two business entities, both business entities will be jointly and severally liable to CalPERS for the proper performance of the entire Agreement.

60. Notices

- A. Both parties to this Agreement will designate a specific staff representative for the purpose of communications between the parties. Any notice or other written communication pursuant to this Agreement will be deemed effective immediately upon personal delivery, or if mailed, three (3) days after the date of mailing, or if delivered by express mail, e-mail, or facsimile, immediately upon the date of confirmed receipt, to the following representatives:

For CalPERS:

California Public Employees' Retirement System
Attention: Contracts Officer
400 Q Street, Room LPW 2580
Sacramento, CA 95811
Telephone No. (916) 795-3020
FAX No. (916) 795-3379
E-mail: OSSD_ContractsAdmin@CalPERS.ca.gov

For Contractor:

[Name]
[Firm]
[Address]
[City, State, Zip Code]
Telephone No.
FAX No.
E-mail:

- B. Either party to this Agreement may, from time to time by notice in writing served upon the other, designate a different mailing address to which, or a different person to whom, all such notices thereafter are to be addressed.

61. Publicity

No publicity release or announcement concerning this Agreement or the transactions contemplated herein shall be issued by Contractor without advance written approval by CalPERS.

62. Timeliness

The parties agree that time is of the essence with respect to all obligations under this Agreement.

63. Force Majeure

Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance when such delays arise out of causes beyond the control and without the fault or negligence of the offending party. Such causes may include, but are not restricted to, Acts of God or of the public enemy, acts of the State in its sovereign capacity, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

64. Amendments

This Agreement may be amended by mutual consent of the parties. Except as provided herein, no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on either party.

65. Waivers

No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

66. Severability

Should one or more provisions of this Agreement be held by any court to be invalid, void or unenforceable, such provision(s) will be deemed to be restated to effect the original intentions of the parties as nearly as possible in accordance with applicable law. The remaining provisions shall nevertheless remain and continue in full force and effect.

67. Incorporation of Amendments to Applicable Laws

Any references to sections of federal or state statutes or regulations shall be deemed to include a reference to any amendments thereof and any successor provisions thereto.

68. Titles/Section Headings

Titles or headings are not part of this Agreement, are for convenience of reference only, and shall have no effect on the construction or legal effect of this Agreement.

69. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any state's or federal conflict of laws provisions or principles). Any suit brought hereunder shall be brought in a state or federal court sitting in Sacramento, California, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

70. Evaluation of Contractor

Pursuant to Public Contract Code section 10369, CalPERS shall evaluate Contractor's performance under the terms and conditions of this Agreement within sixty (60) days after the completion of Contractor's performance under this Agreement. If the evaluation indicates unsatisfactory performance, a copy will be sent to the Department of General Services, the Office of Legal Services and to Contractor who may file a response to the evaluation. The evaluation and response shall remain on file for thirty-six (36) months and shall not be public records.

71. Independent Contractor

Contractor, Contractor's personnel and subcontractors shall operate as independent contractors and shall not be considered as employees or agents of CalPERS or the State of California. Nothing in this contract shall be construed to create any employment relationship between CalPERS, the State of California, or any of its employees and the Contractor or any of its employees or subcontractors.

Contractor agrees to indemnify, defend, and hold CalPERS harmless from any and all claims made against it including, but not limited to, claims for salaries, liability for tax withholding, workers' compensation, disability or other employment benefits, or injuries or death of Contractors' employees or subcontractors. Contractor is responsible for all associated fees and costs, including attorneys' fees, incurred by Contractor and/or by CalPERS.

Contractor is solely responsible for ensuring its employees, subcontractors, and any other worker it chooses to perform duties under this contract meet all Federal and State employment laws and requirements.

72. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

73. Binding Effect

This Agreement, any instrument or Agreement executed pursuant to this Agreement, and the rights, covenants, conditions and obligations of Contractor and CalPERS contained herein and therein, shall be binding upon the parties and their successors, assigns and legal representatives.

74. Days

Wherever in this Agreement a set number of days is stated or allowed for a particular event to occur, the days are understood to include all calendar days, including weekends and holidays, unless otherwise specified.

75. Ambiguities Not Held Against Drafter

This Agreement having been freely and voluntarily negotiated by all parties, the rule that ambiguous contractual provisions are construed against the drafter of the provision shall be inapplicable to this Agreement.

76. Entire Agreement/Incorporated Documents/Order of Precedence

- A. This Agreement contains all representations and the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda, or agreements are replaced in total by this Agreement.
- B. This Agreement shall consist of the following, all of which are hereby expressly incorporated herein:
 - (i) The terms of the main body of this Agreement together with any attached Addenda, and including any amendments to the foregoing;
 - (ii) The Business Associate Agreement (if applicable);
 - (iii) Any applicable Statement of Work, Letter of Engagement and/or Service Level Agreement;
 - (iv) All Attachments to this Agreement, Exhibits and any other attached documents, including any amendments to the foregoing;
 - (v) Request for Proposal No. 2017-8368, dated April 2, 2018, including any amendments or clarification issued by CalPERS (collectively "the RFP"), all of which are expressly incorporated herein;
 - (vi) Contractor's response to the RFP, dated May 11, 2018, which is expressly incorporated herein; and
 - (vii) Any other provisions, terms, or materials expressly incorporated herein.
- C. In the event there are any inconsistencies or ambiguities among the terms of this Agreement and incorporated documents, the following order of precedence shall be used:
 - (i) Applicable laws;
 - (ii) The terms and conditions of the main body of this Agreement together with any attached Addenda, and including any amendments to the foregoing;

- (iii) The Business Associate Agreement (if applicable);
- (iv) Any applicable Statement of Work, Letter of Engagement and/or Service Level Agreement;
- (v) All Attachments to this Agreement, Exhibits and any other attached documents, including any amendments to the foregoing;
- (vi) The RFP, including any addenda thereto;
- (vii) Contractor's response to the RFP; and,
- (viii) Any other provisions, terms, or materials expressly incorporated herein.

77. Additional Documents

Contractor and CalPERS agree to execute such additional documents and perform such further acts as may be reasonable and necessary to carry out the provisions of this Agreement.

STATEMENT OF WORK

LIST OF KEY PERSONS AND RESUMES

[The resumes for Key Persons will be inserted into the final Agreement.]



CalPERS Contract-Related Disclosure Form

*(To be used if Contractor is not required to file a
Placement Agent Information Disclosure Form (2 CCR § 559))*

This form is to be used for all Contract-Related Disclosures, including Proposals.

Please refer to title 2 California Code Regulations section 559.1 (b)(1) through (b)(3), prior to completing this form.

- a. Solicitation or Contract Number:

- b. Proposer or Contractor Name:

- c. Name of Individual Authorized to bind the Proposer or Contractor:

- d. Contact Person (if different than above):

- e. E-mail Address:

- f. Phone No:

- g. Name of CalPERS Contact (if applicable):

Have you, your firm or your firm's principals, employees, agents, or affiliates compensated or agreed to compensate, directly or indirectly, any Agent as defined in section 559.1(a)(1) (whether or not employed by you) or any entity to act as Agent in connection with this Solicitation or Contract? (§559.1 (b)(1))

☐ Yes. ☐ No.

If you checked Yes, please respond to questions 1 through 5 below, and sign and date the Form on the final page.

If you checked No, please respond to question 5 below, and sign and date this Form on the final page.

1. Please list the names and relationships for each Agent in connection with the CalPERS Solicitation or Contract, including a description of the relationship with the Proposer or Contractor. (Add an additional page if necessary.) Please check the box to the left if the Agent is a current or former CalPERS Board Member, Staff Member, consultant, or has a Familial Relationship with any such individual.

	Name	Relationship
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		
<input type="checkbox"/>		

2. Please attach a copy of all contracts, agreements, or other documents memorializing the relationship between the Proposer or Contractor and the Agent. When an *entity* is retained as an Agent, please also include the requested information for any officer, director, or employee actively providing Agent services with regard to CalPERS or receiving more than 15% of the Agent fees.
3. Provide a description of any financial or Familial Relationship(s) between the Agent and a Board Member or Staff Member, including the names of the Board Member(s) and/or Staff Members:

4. Describe any Things of Value given or offered by the Agent to a Board Member or Staff Member during the twelve (12) months preceding the date the Contract-Related Disclosure Form is due.

5. Describe any Things of Value given or offered by the Proposer or Contractor to a Board Member or Staff Member during the twelve (12) months preceding the date the Contract-Related Disclosure Form is due.

By executing this form the undersigned represents and warrants the information set forth herein is true and correct. The undersigned agrees to update this information within 14 calendar days of the date Proposer or Contractor knows or reasonably should have known of any defect or changes to this information.

The Contract-Related Disclosure Form and attachments shall be a public record subject to disclosure under the California Public Records Act. No confidentiality restrictions shall be placed on information submitted by the Proposer or Contractor.

The undersigned represents and agrees it shall make a representation and warranty as to the continuing accuracy of this information in any final written agreement between it and CalPERS.

I, the official named below, acknowledge and declare I have read and understand CCR section 559.1, and that the above-named firm has provided information required by section 559.1 and this Form. I am duly authorized to make this declaration on behalf of the above-named firm, and declare the foregoing is true and correct as of the date of execution of this document. I further acknowledge my firm's responsibility to provide updates in the event this information is determined to be incorrect or has changed.

Authorized Signature

Date

Name and Title

CalPERS GIFT POLICY (Revised 05/12)

1. Background

The receipt of gifts by CalPERS staff may be perceived as creating a potential conflict with the interests CalPERS is committed to place above all others - the interests of our members. Even in limited circumstances when applicable laws and policies permit the acceptance of gifts, our members and the public may perceive such gifts as creating a conflict of interest or an attempt to influence or reward official government actions and decisions.

2. CalPERS Policy

CalPERS Form 700 Filers shall not accept gifts with an aggregate value in excess of \$50 during a calendar year from one source that is any of the following:

- (1) Any person or entity:
 - a. doing business with CalPERS;
 - b. seeking to do business with CalPERS; or
 - c. that is the type of entity that does business with CalPERS (e.g., any law firm, any health services provider, or any information technology company, even if the entity is not currently doing or seeking to do business with CalPERS); or
- (2) A finder, solicitor, marketer, consultant, broker, placement agent or other intermediary of such an entity.

A source does not include any of the following:

- (1) A trade association or entity organized and operated for charitable, scientific, educational, philanthropic, social welfare, employee association or similar purposes (e.g., Council of Institutional Investors, National Association of Public Pension Attorneys, Stanford Institutional Investors Forum, Pacific Pension Institute, CERES, International Corporate Governance Network, etc.), if the only business that CalPERS conducts with the entity is the payment of membership dues or fees to them;
- (2) An advisory committee of a governmental agency of which CalPERS is a member; or
- (3) An entity that issues publicly-traded securities, provided that the only business that CalPERS does with the company is the purchase, holding, or sale of such a security.

The term “doing business” means a contractual or other transactional relationship between any person or entity and CalPERS.

The term “gift” has the same meaning as the term is defined in Government Code Section 82028 and as interpreted by regulations and opinions issued by the Fair Political Practices Commission. (See, Limitations and Restrictions on Gifts, Honoraria, Travel and Loans, dated March 2012. Staff are counseled to refer to the most current version of this publication, which is available at www.fppc.ca.gov).

This policy does not replace or supersede the provisions and requirements of the Political Reform Act or regulations promulgated thereunder. Staff remain subject to the annual gift limit under Government Code section 89503, and the requirement to report gifts of \$50 or more and multiple gifts totaling \$50 or more from a single source.

3. Resources

[Government Code Section 82028](#)

Fair Political Practices Commission – Gift FAQs

[Gifts: Frequently Asked Questions](#)

4. Effective Date

This Gift Policy is effective June 1, 2012.