

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Public Employees' Retirement System

CONTRACTOR'S NAME

Grant Thornton, LLP

2. The term of this Agreement shall commence on October 1, 2015, or upon execution of the Agreement by all parties, whichever date is later, and end September 30, 2020.

3. The maximum amount of this Agreement is: **\$ 0.00**

4. THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, HEREINAFTER "CALPERS", AND GRANT THORTON, LLP, HEREINAFTER "CONTRACTOR", AS FOLLOWS:

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>Grant Thornton, LLP</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Graeme Finley, Managing Director</b>		
ADDRESS <b>770 L Street, Suite 950 Sacramento, CA 95814</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>California Public Employees' Retirement System</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	<input checked="" type="checkbox"/> Exempt per: Exempt from approval by the Department of General Services Per California Constitution, Article XVI, Section 17.
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Christian Farland, Chief, Information Technology Performance &amp; Accountability</b>		
ADDRESS <b>400 Q Street Sacramento, CA 95811</b>		

**PROJECTED EXPENDITURES**

AMOUNT ENCUMBERED BY THIS DOCUMENT <b>\$ 0.00</b>	PROGRAM/CATEGORY (CODE AND TITLE) <b>ITAD /Contracts &amp; Procurement Unit</b>			FUND TITLE <b>Not Applicable</b>
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT <b>\$ 0.00</b>	ITEM <b>Not Applicable</b>	CHAPTER <b>---</b>	STATUTE <b>---</b>	FISCAL YEAR <b>Not Applicable</b>
TOTAL AMOUNT ENCUMBERED TO DATE <b>\$ 0.00</b>	OBJECT OF EXPENDITURE (CODE AND TITLE) <b>Not Applicable</b>			

*I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.*

ACCOUNTING OFFICER'S SIGNATURE  
✍ Not Applicable

DATE SIGNED

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**Attachments**

**Attachment A - List of Approved Verticals and Classifications**

**Attachment B - CalPERS Contract-Related Disclosure Form**

**Attachment C - Business Associate Agreement**

## 1. BUSINESS TERMS

### 1.1 Services to be Provided

Contractor agrees to provide for CalPERS, service in accordance with the terms and conditions set forth herein and as detailed in an awarded Letter of Engagement (Note that references herein to the Letter of Engagement, mean the Statement of Work referenced in Request for Proposal No. 2014-7354, dated January 22, 2015). Any awarded Letter of Engagement will be deemed to be incorporated into this Agreement.

### 1.2 Term of Agreement

The term of this Agreement shall begin on October 1, 2015, or upon execution of the Agreement by all parties, whichever date is later, and end on September 30, 2020, unless terminated earlier or extended in accordance with the provisions of this Agreement. Notwithstanding the foregoing, this Agreement may be extended at CalPERS discretion prior to the expiration of the pool on September 30, 2020, or the Agreement will terminate automatically upon the expiration of the pool.

### 1.3 Definitions

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified:

- A. **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
- B. **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by Contractor.
- C. **"Attachment"** means a mechanical, electrical, or electronic interconnection to Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by Contractor.
- D. **"Business Entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- E. **"Buyer"** means the California Public Employees' Retirement System's (CalPERS) authorized contracting official.
- F. **"CalPERS"** means the California Public Employees' Retirement System, its Board of Administration, its employees, and authorized representatives.
- G. **"Commercial Software"** means Software developed or regularly used that:
  - i) Has been sold, leased, or licensed to the general public;
  - ii) Has been offered for sale, lease, or license to the general public;
  - iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or

- iv) Satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- H. **"Computer"** means a programmable electronic device that can store, retrieve, and process data.
- I. **"Computer System"** refers to the hardware and software components that run a computer or computers.
- J. **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- K. **"Custom Software"** means Software that does not meet the definition of Commercial Software.
- L. **"Contractor"** means the Business Entity with whom CalPERS enters into this Contract. Contractor shall be synonymous with "supplier," "vendor" or other similar term.
- M. **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, and other items (e.g., reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- N. **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- O. **"Documentation"** means non-proprietary manuals and other printed materials necessary or useful to CalPERS in its use or maintenance of the Equipment or Software provided hereunder. 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 Letter of Engagement.
- P. **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Computer System or subsystem, including Hardware and Operating Software (if any).
- Q. **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
- R. **"Facility Readiness Date"** means the date specified in the Letter of Engagement by which CalPERS must have the site prepared and available for Equipment delivery and installation.
- S. **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- T. **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also "Equipment."
- U. **"Installation Date"** means the date specified in the Letter of Engagement by which Contractor must have the ordered Equipment ready (certified) for use by CalPERS.

- V. **"Information Technology"** refers to the broad subject concerned with all aspects of using computers to manage and process information.
- W. **"Machine"** means an individual unit of a Computer System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- X. **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- Y. **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by Contractor to test Equipment for proper functioning and reliability.
- Z. **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- AA. **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- BB. **"Mean Time To Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- CC. **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- DD. **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by CalPERS. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- EE. **"Performance Testing Period"** means a period of time during which CalPERS, by appropriate tests and production runs, evaluates the performance of newly-installed Equipment and Software prior to its acceptance by CalPERS.
- FF. **"Period of Maintenance Coverage"** means the period of time, as selected by CalPERS, during which maintenance services are provided by Contractor for fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- GG. **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by Contractor, which is designed to keep the Equipment in proper operating condition.
- HH. **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by CalPERS, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- II. **"Programming Aids"** means Contractor-supplied programs and routines executable on Contractor's Equipment which assists a programmer in the development of

applications including language processors, sorts, communications modules, data base management systems, and utility routines, such as tape-to-disk routines, disk-to-print routines, etc.).

- JJ. **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to Contractor and which are licensed to CalPERS for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- KK. **"Remedial Maintenance"** means that maintenance performed by Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- LL. **"Site License"** means for each product, the term "Site License" shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Letter of Engagement.
- MM. **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- NN. **"Software Failure"** means a malfunction in Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of "Equipment Failure."
- OO. **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- PP. **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- QQ. **"U.S. Intellectual Property Right"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

#### 1.4 Key Persons and Key Positions

- A. In the event the parties have identified any member of Contractor's staff as a "Key Person", an individual who plays a significant administrative, policy or consulting role, then Contractor shall not replace or substitute any such Key Person without CalPERS prior written approval. CalPERS reserves the right to disapprove the Contractor's continuing assignment of Key Persons provided to CalPERS under this Agreement.
- B. In the event that the parties have identified any specific job title associated with a position in Contractor's organization that will play a significant role under this Agreement as a "Key Position" and the position is vacant when identified, then Contractor shall act speedily and diligently to fill any vacancies in such identified job title/position.



### 1.5 Required Notice of Contractor Changes

- A. Contractor shall notify CalPERS in writing within five (5) calendar days of the occurrence of any of the following events:
- (i) 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) Contractor intends to replace any Key Person;
  - (iii) There is a replacement of a person in a Key Position or a vacancy in a Key Position;
  - (iv) There is any change in the majority ownership, control, or business structure of Contractor; or
  - (v) There is any other change in Contractor's business, partnership or corporate organization that a reasonable person might believe could have a material impact on Contractor's performance of this Agreement or on CalPERS rights under this Agreement.
- B. All written notices from Contractor pursuant to this section shall contain sufficient information to permit CalPERS to evaluate the changes under the same criteria that were used by CalPERS in its award of this Agreement to Contractor. Contractor agrees to provide CalPERS with such additional information as CalPERS may request. If Contractor requests confidential treatment for any information it provides, CalPERS shall treat the information as confidential, subject to applicable law.

### 1.6 Insurance Requirements

Contractor warrants that it carries adequate liability, worker's compensation, 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. In making its determination of what levels of insurance are reasonably acceptable to CalPERS, CalPERS shall take into account the nature of the insurable risks entailed in Contractor's performance of the Agreement and Contractor's ability, if any, to self-insure any risk. Contractor agrees to furnish satisfactory evidence of this insurance coverage to CalPERS upon request.

### 1.7 Protection of Information Assets

- A. The following terms shall be given the meaning shown:
- (i) **"Information Assets"** means any information 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.

- 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) working 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.

#### 1.8 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.

#### 1.9 Rights in Work Product

- A. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the 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 Letter of Engagement.
- 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 deliverable or 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. "Government Purpose Rights" also include the right to release or disclose the Work Product 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 for any State government purpose. Such recipients of the Work Product may include, without limitation, State, Contractors, California local governments, the U.S. federal government, and the State 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 for any commercial purpose.
- D. Any Work Products developed by the Contractor and designated confidential by CalPERS shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to CalPERS. 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 the contractor.
- E. The ideas, concepts, know-how, or techniques relating to computer systems, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
- F. This Agreement shall not preclude the Contractor from developing materials outside this Agreement that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Agreement.

#### 1.10 Attorneys' Fees and Costs

In the event of any litigation between the parties to enforce or interpret the provisions of this Agreement, the non-prevailing party shall, unless both parties agree, in writing, to the contrary, pay the attorneys' fees and costs of the prevailing party arising from such litigation, including reasonable attorneys' fees, allocated costs for services of in-house counsel, and court costs. These attorneys' fees and costs shall be in addition to any other relief to which the prevailing party may be entitled.

#### 1.11 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 two times the total Purchase Order Amount including any change orders for the applicable Letter of Engagement. CalPERS reserves the right, in its sole discretion, to raise the limitation of liability based upon the nature of the services or goods sought through the Letter of Engagement. CalPERS will state the increase in the limitation of liability in the Letter of Engagement that is provided to the Contractor in the prequalified pool of firms. Should Contractor respond to the Letter of Engagement and ultimately be selected by CalPERS to perform the Letter of

Engagement with an increased limitation of liability, the Contractor hereby agrees to be bound by the limitation of liability set forth in the Letter of Engagement or as negotiated by the parties. Any change to the limitation of liability must be in writing, signed by both parties, and will be deemed to be incorporated in this 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
  - (iv) to costs or attorney’s 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 damage is specifically set forth in the Services to be Provided or
  - (ii) to the extent that Contractor’s liability for such damages arises out of Subsection (B)(i), (B)(ii), or (B)(iv) above

#### 1.12 Indemnification

Contractor shall indemnify, defend and save harmless the State of California, CalPERS, the CalPERS Board of Administration, the California Public Employees' Retirement Fund, Public Employees' Long-Term Care Fund, Legislators' Retirement Fund, Judges' Retirement Fund, Judges' Retirement Fund II, Annuitant's 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, 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.

#### 1.13 Dispute Resolution Process

- A. Except as set forth in subsection B of this section, if any dispute arising out of or in connection with this Agreement is not resolved within a reasonable period of time by Contractor and CalPERS staff normally responsible for the administration of this Agreement, the parties shall attempt to resolve the dispute through executive level involvement. The Executive Officer of each party or his or her designated representative shall meet and confer to attempt to resolve the dispute. If the parties agree, a neutral third party mediator may be engaged to assist in dispute resolution at either the line employee level or the executive level, or both. If after expending reasonable efforts at executive level resolution of the dispute, no resolution can be reached, then either party may seek its rights and remedies in a court of competent jurisdiction.
- B. CalPERS shall not be required to follow the dispute resolution process set forth in this section before: (1) issuing any notice of termination for default under this Agreement and (2) barring Contractor from further access to CalPERS computer systems and premises. However, neither party may seek its rights and remedies in court respecting any such notice of termination for default without first following the dispute resolution process stated in this section.
- C. Contractor shall continue to attempt to correct the Notice of Deficiency or Notice of Rejected Deliverable during the Dispute Resolution Process.

#### 1.14 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 agrees to indemnify and hold CalPERS harmless from any loss, damage or injury; to defend at its own expense any and all suits and actions; and to 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 prompt 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 software, services, or deliverables provided by Contractor and paid for by CalPERS under this Agreement, in connection with or in combination with equipment, devices, or software not supplied by Contractor, 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 specifications, requirements, or directions provided by CalPERS, and such infringement would not have occurred but for such compliance.

### 1.15 Inspection, Acceptance, and Rejection

Unless otherwise specified in the Letter of Engagement:

- 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 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.

## 2. FINANCIAL PROVISIONS

### 2.1 Amount of Agreement

Contractor shall be paid as prescribed in a Letter of Engagement for services rendered. 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 type of services and fees as reflected in each Letter of Engagement that is awarded to the firm. 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.

## 2.2 Scope of Consideration Paid

The consideration specified herein to be paid Contractor is in full compensation for all of Contractor's costs incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided. Contractor will not be compensated for travel time.

## 2.3 Invoices and Payments

- A. Unless payment on a different basis is specified under this Agreement, Contractor shall submit itemized monthly invoices. Invoices shall state in detail the services performed or goods supplied, the charges associated with each line item of services or goods, and whether it is a targeted business enterprise (see Section 3.5).
- B. If CalPERS consents in writing to the use of a subcontractor for any part of the work as provided in Section 3.5, subcontracted work shall be itemized separately, identifying:
  - (i) The subcontractor;
  - (ii) Whether the subcontractor is a Targeted Business Enterprise as that term is defined in Section 3.5.
- C. All invoices for payment shall be submitted in arrears for work already performed. No invoice may be rendered, 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 invoices submitted. Payment is due to the Contractor 45 days from the date the services are received and accepted by CalPERS or 45 days from the date a correct invoice is received in the office specified by CalPERS, whichever is later. When provision is made for a testing period preceding acceptance by CalPERS, "Date of Acceptance" shall mean the date services are accepted by CalPERS during the specified testing period.

## 2.4 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. The only taxes CalPERS will pay on the services rendered pursuant to this Agreement are state and local sales or use taxes.

## 2.5 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.

## 2.6 Funding Provisions

The validity of this Agreement is subject to the availability of funds to pay the fees of Contractor under this Agreement approved by the CalPERS Board of Administration, in accordance with Article XVI, Section 17, California Constitution. If this Agreement overlaps CalPERS fiscal years, CalPERS monetary obligation under this Agreement in subsequent fiscal years is subject to and contingent upon availability of funds budgeted for the purpose of this Agreement.

## 3. COMPLIANCE ISSUES

### 3.1 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 to be qualified to do business in California currently and during the term of the Agreement.

### 3.2 Reports and/or Meetings

- A. Contractor shall provide oral or written progress reports as requested by CalPERS to determine if Contractor is performing to expectations or is on schedule, to provide communication of interim findings, and to afford occasions for discussing and resolving problems encountered.
- B. Contractor shall meet or participate in telephonic conferences with CalPERS staff and/or the Board upon request to discuss progress on the Agreement or to present findings, conclusions and recommendations.

### 3.3 Books and Records

- A. In case this Agreement calls for goods and services that are priced on a cost reimbursement basis, in whole or in part, then Contractor shall keep accurate books and records documenting its costs and other relevant data (such as overhead allocations) connected with the performance of this Agreement. Contractor shall ensure that books and records of subcontractors, suppliers, and other providers reflecting their costs and other relevant data shall also be accurately maintained.
- B. Regardless of the pricing basis of this Agreement, Contractor shall maintain adequate books and records to establish its compliance with all Contractor covenants, representations, and warranties made in this Agreement, and shall require all permitted subcontractors to do the same. Contractor's financial statements, books, accounts, and records shall be prepared and maintained in compliance with all applicable state and federal laws, regulations, and Generally Accepted Accounting Principles and statutory accounting principles.



- C. All books and records required by this section shall be kept in a secure location at Contractor's office(s) and shall be available for inspection and copying by CalPERS and its representatives at any time.

### 3.4 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 Bureau of State Audits, 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 Bureau of State Audits (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 Bureau of State Audits, 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.

### 3.5 Disabled Veteran Business Participation

- A. Contractor agrees that, as a Contractor of CalPERS, it will meet the requirements of the CalPERS 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 6% DVBE participation. DVBE is referred to hereafter as a "Targeted Business Enterprise" (TBE).

If Contractor is a California Certified Micro Business, 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 Title 2,

California Code of Regulations, 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.

### 3.6 Nondiscrimination

- A. 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, race, color, ancestry, religious creed, national origin, physical disability (including Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS)), mental disability, 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, or use of family and medical care leave pursuant to federal law. Contractors 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 (Government Code, Section 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000, et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-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.
- B. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

### 3.7 Statement of Compliance - Nondiscrimination

Contractor's signature affixed hereon and dated shall constitute a certification under the 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 and Title 2, California Code of Regulations, Section 11100, et seq.

### 3.8 Americans with Disabilities Act

By signing this Agreement, Contractor assures CalPERS 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.

### 3.9 National Labor Relations Board Certification

Contractor, by signature hereto, does swear under penalty of perjury that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2)-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.

### 3.10 Drug-Free Workplace

- A. Contractor hereby certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.) and will provide a drug-free workplace by taking the following actions:
- (i) 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.
  - (ii) Establish a Drug-Free Awareness Program to inform employees about:
    - (a) The dangers of drug abuse in the workplace;
    - (b) The person's or organization's policy of maintaining a drug-free workplace;
    - (c) Any available counseling, rehabilitation and employee assistance programs; and,
    - (d) Penalties that may be imposed upon employees for drug abuse violations.
  - (iii) Every employee who works on the proposed Agreement will:
    - (a) Receive a copy of the company's drug-free policy statement; and,
    - (b) Agree to abide by the terms of the company's statements as a condition of employment on the Agreement.

### 3.11 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 Section 11200) in accordance with Public Contract Code Section 10353.

### 3.12 Child Support Compliance Act

For any contract in excess of \$100,000, the Contractor acknowledges in accordance there with, that:

- A. The Contractor recognizes the importance of child and family support obligations and shall 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 Family Code; and,
- B. The Contractor, to the best of its knowledge 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.

### 3.13 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.

### 3.14 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 they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://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).

### 3.15 Recycling Certification

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

### 3.16 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.

## 4. REPRESENTATIONS AND WARRANTIES

### 4.1 No Conflicts or Consents

- 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.

#### 4.2 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.

#### 4.3 Power and Authority

A. Contractor represents and warrants that:

- (i) It has the power and authority to enter into this Agreement and to carry out its obligations hereunder;
- (ii) The execution of this Agreement has been duly authorized by Contractor and no other proceeding on the part of Contractor is necessary to authorize this Agreement; and,
- (iii) Contractor has completed, obtained, and performed all registrations, filings, approvals, authorizations, consents, or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

#### 4.4 Signature Authorization

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

#### 4.5 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 Section 16700, of Part 2 of Division 7 of the Business and Professions 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.

## **5. CONTRACTOR INTEGRITY AND PROCESS INTEGRITY ISSUES**

### **5.1 Contract Related Disclosure Requirements**

Contractor agrees it will be bound by and comply with the terms of title 2, California Code of Regulations (CCR) section 559.1, Required Contract-Related Disclosures (“Disclosure Requirements”) effective May 8, 2012 during the term of this Agreement, and that Contractor will cooperate with CalPERS staff to meet Contractor’s obligations under these Disclosure Requirements.

### **5.2 Disclosure Requirements**

Contractor acknowledges receipt of a copy of CCR section 559.1, (attached hereto as Attachment B), which imposes certain disclosure requirements described therein. Contractor represents and warrants it has provided CalPERS with the Contract-Related Disclosure Form PERS01A0068, as described at CCR section 559.1, subdivision (b)(4) (attached hereto as Attachment B), including all disclosures required by CCR section 559.1, prior to the date hereof and that all information disclosed is true, correct and complete as of the date hereof. If Contractor determines at any time subsequent to filing Form PERS01A0068 that the information disclosed has become inaccurate, untrue, incomplete or misleading, Contractor will notify CalPERS and provide CalPERS with an updated Form PERS01A0068 within fourteen (14) calendar days of the date that Contractor knew or should have known of such defect in the information.

### **5.3 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.

### **5.4 Conflict of Interest**

- A. All actual and potential Conflicts of Interests of the firm and each Key Person must be fully disclosed in writing. The firm shall explain in writing how it proposes to manage or mitigate all potential or actual Conflicts of Interests of the firm or any Key Persons. The disclosure requirements relating to Conflicts of Interests shall be interpreted broadly and in cases where the firm is unsure whether an actual or potential Conflict of Interest actually exists, the firm should nevertheless disclose the actual or potential Conflict of Interest of the firm 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 the firm'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 fails to disclose a Conflict of Interest and/or fails to receive a written waiver from CalPERS as required by this section, CalPERS, in its sole and absolute discretion, may penalize Contractor up to five percent (5%) of the total Agreement price.
- E. Contractor acknowledges that the System is subject to the provisions of the Political Reform Act of California (Government Code Section 81000, et seq., and all regulations adopted thereunder, including, but not limited to, Title 2, California Code of Regulations, Section 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 (Title 2, California Code of Regulations, Section 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.

#### 5.5 Gift and Political Contributions Disclosure

- A. Contractor must comply with Government Code Section 20152.5, as it exists and as amended by the Legislature and implemented by the Board of Administration from time to time, concerning gift and campaign disclosure policies. The existing code section is stated as follows:
  - (i) 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.

## 6. GENERAL PROVISIONS

### 6.1 Termination at Option of CalPERS

- A. This Agreement may be terminated in whole or in part by CalPERS at its option at any time upon ten (10) days written notice to Contractor.
- B. In the event CalPERS terminates all or a portion of this Agreement at CalPERS option, CalPERS shall within a reasonable time thereafter pay Contractor for satisfactory services performed in accordance with this Agreement prior to the termination at the rates specified in the Agreement. CalPERS obligation to pay Contractor for services performed in such a case shall reflect Contractor's direct costs, overhead, and profit on the services satisfactorily performed in accordance with this Agreement prior to the termination and reasonable costs of demobilization (wind down) and Agreement closeout to the extent not already included in Contractor's direct costs, overhead, and profit.

### 6.2 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 use its best efforts to discontinue all services affected by the notice as soon as reasonably possible, and shall in all events discontinue all services affected by the notice no later than ten (10) days after receiving the notice, unless the notice specifies that Contractor shall stop work sooner. In addition, Contractor shall:
  - (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.

### 6.3 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 because:
  - (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 Section 559.1, Disclosure Requirements, as required and within the timeframe described in Section 5.2 of this Agreement pursuant to Section 559.1, subdivision (c);



- (iii) CalPERS determines that Contractor's disclosures under CCR 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 Section 559.1 in any other way.
- B. Upon receipt of any notice terminating this Agreement, Contractor shall immediately discontinue all services affected unless the notice directs otherwise. In such event, CalPERS shall pay Contractor at the rates specified by this Agreement for all services rendered prior to the effective date of termination. At CalPERS sole discretion, CalPERS may offer an opportunity to cure any breach(s) prior to terminating this Agreement for a breach.

#### 6.4 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) Any liquidated damages specified in this Agreement 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.
- 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 (1) element of CalPERS recoverable damages shall be any additional cost above the Agreement price 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 B of this section, CalPERS may offset its damages against the payment owing to Contractor.

## 6.5 Ancillary Issues Relating to Contractor Default

- A. 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,
- B. 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 breach by Contractor justifying termination of the Agreement by CalPERS.
- C. In case CalPERS elects to terminate this Agreement in whole or in part for Contractor's default, CalPERS shall give Contractor ten (10) days written notice of termination for default, specifying the default or defaults justifying the termination. The termination shall become effective after the expiration of such ten (10) day period if the defaults specified by CalPERS in its notice remain uncured at that time.
- D. 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. If Contractor is so barred but nevertheless reasonably believes that it can cure the default alleged by CalPERS within ten (10) days if CalPERS provides documentation and assistance to Contractor, then CalPERS shall offer Contractor such reasonable cooperation, so as to afford Contractor a reasonable opportunity to cure the defaults alleged by CalPERS before the termination becomes effective. In addition, the ten (10) day period allowed for Contractor to attempt to cure the defaults alleged by CalPERS shall be reasonably extended to take into account the impact of Contractor's not having access to CalPERS premises and computer systems.
- E. 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.

## 6.6 Contractor 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 adjudicated bankrupt, or a receiver is appointed and qualifies. In case any of the foregoing events occurs, CalPERS may terminate this Agreement upon five (5) days written notice. If CalPERS does so, CalPERS shall have the right to recover damages from Contractor as though the Agreement had been terminated for Contractor default, and CalPERS shall pay Contractor for satisfactory services rendered on the same basis that would apply under this Agreement in case of a termination by CalPERS for Contractor's default.

#### 6.7 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.

#### 6.8 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.

#### 6.9 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.

#### 6.10 Amendments

This Agreement may be amended only 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 all of the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

#### 6.11 Time is of the Essence

Time is of the essence in this Agreement.

#### 6.12 Independent Contractor

Contractor and Contractor's personnel shall operate as independent contractors and shall not be considered as employees or agents of CalPERS or the State of California.

#### 6.13 Subcontractors

- A. 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.
- B. Contractor shall require any subcontractor to agree to be bound by all provisions of this Agreement as applicable.

#### 6.14 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.

#### 6.15 Notices

- A. Any notice or other written communication that may or must be given hereunder shall be deemed given when delivered personally, or if it is mailed, three (3) days after the date of mailing, unless delivery is by express mail, telecopy, or telegraph, and then upon the date of the confirmed receipt, to the following representatives:

For CalPERS: California Public Employees' Retirement System  
Attention: Contracts Officer  
400 Q Street, LPW, Room 2580  
Sacramento, CA 95811  
Telephone No. (916) 795-3020  
FAX No. (916) 795-3379  
E-Mail: [OSSD\\_ContractsAdmin@calpers.ca.gov](mailto:OSSD_ContractsAdmin@calpers.ca.gov)

For Contractor: Virginia Dawson, Contracts Associate  
Grant Thornton, LLP  
1016 La Posada, Suite 280  
Austin, TX 78752  
Telephone No. 512-692-1235  
FAX No. 916-449-3981  
E-Mail: [Virginia.dawson@us.gt.com](mailto:Virginia.dawson@us.gt.com)

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

#### 6.16 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.

#### 6.17 Force Majeure

Neither party to this Agreement shall be in default of its obligations hereunder for delay or failure in performing that arises 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, acts of the State Controller's Office or other State agency having an impact on CalPERS ability to pay its obligations, acts of the State legislature, fires, floods, power failure, disabling strikes, epidemics, quarantine restrictions, and freight embargoes.

#### 6.18 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.

#### 6.19 Evaluation of Contractor

Pursuant to Public Contract Code Section 10369, the Staff 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 the 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.

#### 6.20 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 therein, shall be binding upon the parties and their successors, assigns, and legal representatives.

#### 6.21 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.

#### 6.22 Severability

Should one (1) 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.

#### 6.23 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:
  - (i) The terms of this Agreement;

- (ii) All attached documents, which are expressly incorporated herein;
  - (iii) Request for Proposal No. 2014-7354, dated January 22, 2015, including any amendments or clarification issued by CalPERS (collectively "the RFP"), all of which are expressly incorporated herein; and,
  - (iv) Contractor's response to the RFP, dated February 13, 2015, which is 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 this Agreement, including attachments;
  - (iii) The RFP;
  - (iv) Contractor's response to the RFP; and,
  - (v) Any other provisions, terms, or materials expressly incorporated herein.

#### 6.24 Waivers

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

#### 6.25 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.

#### 6.26 Choice of Law, Jurisdiction, and Venue

This Agreement shall be administered, construed, and enforced according to the laws of the State of California (without regard to any conflict of law provisions) to the extent such laws have not been preempted by applicable federal law. Any suit brought hereunder shall be brought in the state or federal courts 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.

#### 6.27 Counterparts

This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### 6.28 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.

#### 6.29 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.

#### 6.30 Business Associate Agreement

Contractor is a Business Associate as that term is defined within and used throughout the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Regulations (Title 45 Code of Federal Regulations Parts 160 and 164). As a Business Associate, Contractor must comply with each of the privacy and health information protection provisions set forth in the Business Associate Agreement (Attachment C) which is hereby incorporated into this Agreement by this reference, and any other applicable provisions of the HIPAA Privacy and Security Regulations and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA).

### **7. INFORMATION TECHNOLOGY PROVISIONS**

#### 7.1 Intellectual Property Rights in Deliverables Other than Software

- A. Contractor hereby grants to CalPERS an unlimited, irrevocable, perpetual, royalty-free, non-exclusive, worldwide license, for any CalPERS program purpose, to use, modify, reproduce, perform, release, display, create derivative works from and disclose all inventions, discoveries, works of authorship, technical communications and records prepared by Contractor under this Agreement other than software products, including but not limited to papers, reports, charts, and administrative communications and records.
- B. The ideas, concepts, know-how, or techniques relating to data processing, 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.
- C. This Agreement shall not preclude Contractor from developing materials outside this Agreement that are competitive with the materials developed for CalPERS, irrespective of their similarity to materials developed for CalPERS under this Agreement.

#### 7.2 Disablers and Viruses

- A. Contractor warrants that any software deliverable, when installed, will not contain any feature, program, data, or device that is designed to cause the software to stop functioning, function improperly, or slow down because of:
  - (i) The passage of time; or
  - (ii) An attempt by CalPERS to remove the software from a particular central processing unit or computer environment and install it on a different central processing unit or in a different computer environment; or
  - (iii) An instruction from Contractor during a payment dispute or otherwise; or
  - (iv) The occurrence of any other event.

- B. Contractor warrants that it will take no action to intentionally disrupt or terminate the functioning of any software deliverable without CalPERS prior written consent or a court order. This warranty is given without regard to whether a breach of this Agreement by CalPERS is alleged to have occurred, and without regard to whether CalPERS has paid money allegedly due to Contractor.
- C. Because breach by Contractor of the warranties contained in this section could result in extensive damage to CalPERS operations, Contractor agrees that notwithstanding any other provision of this Agreement to the contrary, CalPERS may pursue all available remedies for breach of these warranties, including actions for direct, incidental, consequential and exemplary damage, plus attorneys' fees and costs.



## **Attachment A – List of Approved Verticals and Classifications**

Grant Thornton, LLP

### **1.0 Business Analysis Services**

Senior Technical Specialist/Lead  
Technical Specialist  
Business Analyst  
Systems Analyst

### **2.0 Project Management Services**

Senior Project Manager  
Project Manager  
Senior Technical Specialist/Lead  
Technical Specialist  
Senior Business Analyst  
Business Analyst

### **3.0 Architecture**

Senior Technical Specialist/Lead  
Technical Specialist  
Business Analyst  
Systems Analyst

### **4.0 Information Services**

Senior Technical Specialist/Lead  
Technical Specialist  
Business Analyst  
Systems Analyst  
Information Analyst  
Data Integrator / Developer

### **6.0 Information Technology Service Management**

Senior Technical Specialist/Lead  
Technical Specialist  
Senior Business Analyst  
Business Analyst  
Instructor

### **7.0 IT Infrastructure & Personal Productivity Services**

Senior Technical Specialist/Lead  
Technical Specialist  
System Architect

### **8.0 Disaster Recovery**

Senior Technical Specialist/Lead  
Technical Specialist  
Instructor

### **9.0 Management Support Services**

Senior Technical Specialist/Lead  
Technical Specialist  
Senior Business Analyst  
Business Analyst  
Senior Systems Analyst  
Systems Analyst

### **10.0 IT Security**

Senior Technical Specialist/Lead  
Technical Specialist  
Systems Analyst

### **14.0 Business Intelligence and Reporting**

Project Manager  
Data Scientist / Engineer  
Information Analyst  
Report Developer  
Data Integrator / Developer  
Data Warehouse Database Administrator (DBA)  
SAS Developer  
QA/Test Engineer  
Instructor