**ATTACHMENT J**

**DRAFT CONTRACT**



**AGREEMENT**

**BY AND BETWEEN**

**THE COMPTROLLER OF THE STATE OF NEW YORK, AS TRUSTEE**

**OF THE COMMON RETIREMENT FUND**

**AND**

**[CONTRACTOR]**

**CONTRACT NUMBER: #ICM XXX**

**This Agreement** (“**Agreement**”) is by and between the Comptroller of the State of New York (the “**Comptroller**”), as Trustee of the Common Retirement Fund (the “**CRF**” or the “**Fund**”) whose principal office is located at 110 State Street, Albany, New York 12236, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [entity type], organized and existing under the laws of [STATE] (the “**Securities Lending Contractor**” or “**Contractor**”) located at [ADDRESS]. Each of the Fund and the Contractor are a “**Party**,” and collectively, the “**Parties**.”

**W I T N E S S E T H**

**WHEREAS**, the Fund, established by Article 9 of the New York Retirement and Social Security Law (“**RSSL**”), was created in 1967 and holds and invests the assets of the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System (collectively, the “**System**” or “**NYSLRS**”);

**WHEREAS,** the Comptroller deems it to be in the best interest of the CRF to retain the Contractor to provide securities lending services for Fund assets, in accordance with the New York State Retirement and Social Security Law (“**RSSL**”);

**WHEREAS,** the Contractor is willing to provide all of the services outlined in the Request for Proposals 24-04 (“**RFP**”) and the Contractor’s proposal (collectively, the “**Services**”) upon the terms and subject to the conditions set forth herein; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

1. **TERM**

The term of this Agreement will commence upon the date of final execution by the CRF and will continue through August 31, 2026 (“**Initial Term**”). The CRF, at the Comptroller’s sole discretion, shall have the option to extend the Agreement under the same terms and conditions of this Agreement for a period of up to two additional years (“**Extended Term**”) (“collectively, the Initial and Extended Terms are the “**Term**”).

1. **DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the following meanings:

“**Affiliate**” – any entity controlling, controlled by, or under common control with Contractor, now or in the future, that takes an active role in securities lending or that is instructed to effect securities trades in the securities markets.

“**Approved Borrower**” – an entity identified on the Approved Borrower List (Schedule E) (to be provided by the CRF to the Contractor) (as may be updated from time to time by the CRF upon notice to Contractor who will act promptly to implement any such amendment) to which the CRF is prepared to lend securities and who executes an SLA (defined below) with the Contractor. The terms Approved Borrower and Borrower are used interchangeably herein.

“**Approved Repo Counterparty**” – an entity identified on the Approved Repo Counterparty List (Schedule F) (to be provided by the CRF to the Contractor) (as may be updated from time to time by the CRF in its sole discretion and upon notice to Contractor, who will act promptly to implement any such amendment) to which the CRF is prepared to enter into Repurchase Transactions and who executes a Repurchase Agreement with the Contractor.

“**Authorized Person**” – any person designated by written notice from the CRF to act on behalf of the CRF under this Agreement. Such persons will continue to be Authorized Persons until such time as Contractor receives Instructions from the CRF (or its authorized agent) that such person is no longer an Authorized Person.

“**Available Securities**” – the CRF Securities Available for Loan with respect to the accounts identified by the CRF in the CRF’s Annual Comprehensive Financial Report (see pages 86-88), found at this link: <https://www.osc.ny.gov/files/reports/finance/pdf/annual-comprehensive-financial-report-2023.pdf>.

“**Business Day**” – any day that the Contractor and the New York Stock Exchange are open for business.

“**Collateral**” – as defined in the SLA (defined below), except that eligible assets or property shall be limited to Eligible Collateral (defined below).

“**Collateral Requirement’’** – with respect to a given security, means the amount that an Approved Borrower must post as Collateral, pursuant to the terms of the applicable SLA (defined below), which must be no less than the then-applicable percentage (currently 102% for securities denominated in United States dollars and 105% for securities denominated in a currency other than United States dollars) of the Market Value of the applicable security. The percentages may be adjusted by the CRF from time to time in its sole discretion and upon written notice to Contractor, who will act promptly to implement any such amendment.

“**CRF**” – defined in the Introductory Clause as the New York State Common Retirement Fund.

“**Custodian**” – The CRF’s custodial bank or such other financial institution as the CRF may identify to Contractor from time to time.

“**Custody Account**” – a segregated account established and maintained by the Custodian to hold securities and other property in the name, and for the benefit, of the CRF pursuant to a Custody Agreement.

“**Custody Agreement**” – an agreement between the Comptroller and the Custodian pursuant to which the Custodian has assumed certain responsibilities and obligations with respect to securities and other property held for the benefit of the CRF in a Custody Account.

“**Demand Loan**” – a loan of securities to an Approved Borrower that can be called for complete repayment at any time by CRF or Contractor on the CRF’s behalf.

“**Distributions**” – all dividends, interest premiums, rights, and any other disbursement with respect to Loaned Securities, including stock dividends and warrants, which the CRF would collect if the Loaned Securities had not been lent to the Approved Borrower (or if CRF were in possession of the Loaned Securities) and is therefore entitled to collect from an Approved Borrower.

“**Domestic Securities**” – securities of an issuer that is organized or existing under the laws of the U.S. or any state thereof, or the District of Columbia, excluding U.S. territories and possessions; which shall include dual listed securities to the extent that they are cleared through the Depository Trust Company.

“**Eligible Collateral**” – assets or property set forth on Schedule B (Eligible Collateral as of the Effective Date of this Agreement, as may be updated from time to time by the CRF in its sole discretion and upon notice to Contractor, who will act promptly to implement any such amendment) which are eligible to be provided by an Approved Borrower to secure its obligations under an SLA (as defined below), as required to satisfy the Collateral Requirement.

“**ERISA**” – the Employee Retirement Income Security Act of 1974, as amended from time to time.

"**ESLA**” – each exclusive securities lending agreement entered into by the Contractor, on behalf of and on terms as approved by the CRF, with an Approved Borrower upon an award of the CRF’s assets (pursuant to an auction process as described below in Section IV (Auction Services)) to such Approved Borrower setting out the terms and conditions of such award and incorporating by reference the terms of the relevant SLA (as defined below).

“**Equivalent Securities**” – securities of the same type, nominal value, description, and number, of the same issuer, and of the same class, as the Loaned Securities.

“**Event of Default**” – a “**Default**” or “**Event of Default**,” as applicable, as each such term may be defined in the applicable SLA or Repurchase Agreement and as noticed where such notice is required under the applicable SLA or Repurchase Agreement.

“**Fund’s Cash Collateral Investment Guidelines**” – as set forth in Schedule A.

“**Instruction**” – an instruction, notice, order, or other instrument that has been verified in accordance with a Security Procedure or, if no Security Procedure (defined herein) is applicable, which Contractor reasonably and in good faith believes to have been given by an Authorized Person.

“**Letter of Credit**” – an irrevocable performance letter of credit issued by a bank, with capital, surplus, and undivided earnings in excess of 100 million dollars, acceptable to the CRF and the Contractor for the account of an Approved Borrower, which letter of credit (a) expires not earlier than such time as shall be agreed between the Approved Borrower and the Contractor, (b) names as the beneficiary the Contractor, as lending agent on behalf of the CRF, (c) is payable to the beneficiary upon presentation of a draft in the amount of any drawing and a statement of the beneficiary that the amount being drawn thereunder represents money owed to the beneficiary in connection with a loan or loans of securities, (d) permits any number of partial drawings (which reduce the amount available under the Letter of Credit), and (e) otherwise contains such terms and provisions as are required by or acceptable to the CRF and the Contractor.

“**Loan**” – a loan of securities to an Approved Borrower pursuant to an SLA (as defined below) executed in accordance with the terms of this Agreement.

“**Loaned Security**” – any security which is subject to a Loan.

“**Market Value**” – shall have the same definition as that set forth in the SLA (as defined below).

“**Mark-to-Market**” – in accordance with reasonable and customary securities lending practices, verifying the Market Value of the Loaned Securities and Collateral by reference to a reputable, independent pricing source (which shall exclude the relevant Approved Borrower) each business day, as defined in the applicable SLA (as defined below), to determine the sufficiency of such Collateral in respect of the Loaned Securities based on the Collateral Requirements as established solely by the CRF.

“**Non-Domestic Securities**” – securities other than Domestic Securities as defined above.

“**Proposal**” – Contractor’s proposal submitted in response to the RFP (as defined herein), which Proposal is annexed hereto and incorporated into this Agreement as Exhibit B.

“**Rebate**” – the amount payable by the CRF, as instructed by the Contractor, to an Approved Borrower in connection with Loans collateralized by cash Collateral, which shall be a percentage of the cash Collateral as agreed by the Approved Borrower and the Contractor.

“**Repurchase Agreement**” – an agreement approved by the CRF as indicated on Schedule F (Approved Repo Counterparty List, which will be provided and updated by the CRF as Repo Counterparties are approved by the CRF), entered into by the Contractor, as the CRF’s agent, and an Approved Repo Counterparty, setting forth their obligations with respect to Repurchase Transactions substantially in the form of the Master Repurchase Agreement, Bond Market Association (version 1996 or the Global Master Repurchase Agreement, Bond Market Association version 2000 (as appropriate)), or any analogous or successor document as may be approved by the CRF, and as supplemented and amended from time to time, provided that any such supplement or amendment to a Repurchase Agreement previously approved by the CRF shall also be subject to CRF approval.

“**Repurchase Margin Percentage**” – shall have the same meaning as the definition of “Buyer’s Margin Percentage” or “Margin Ratio” in the Repurchase Agreement.

“**Repurchase Transactions**” – the investment of cash Collateral received in respect of any Loan by the Contractor, on the CRF’s behalf, in exchange for Repurchase Transaction Collateral pursuant to a Repurchase Agreement as contemplated herein.

“**Repurchase Transaction Collateral**” – shall have the same definition as “Purchased Securities” in the Repurchase Agreement, provided that the securities or other assets comprising “Purchased Securities” shall be limited to the securities or other assets set forth in Schedule A (Fund’s Cash Collateral Investment Guidelines) hereto (as may be updated from time to time by the CRF upon written notice to Contractor, who will act promptly to implement any such amendment).

“**Request for Proposals 24-04**” (“**RFP**”) – the CRF’s request for proposals for securities lending services, which RFP is annexed hereto and incorporated into to this Agreement as Exhibit A.

“**Return Date**” – the date an Approved Borrower is obligated to return any Loaned Security in accordance with the terms of the applicable SLA.

“**SEC**” – the United States Securities and Exchange Commission.

“**Securities Collateral**” – securities eligible for posting as Collateral as described in item 3 of Schedule B (Eligible Collateral as of the Effective Date of this Agreement), as may be amended by the CRF from time to time in its sole discretion and upon notice to Contractor, who will act promptly to implement any such amendment.

“**Securities Lending Agreement**” or “**SLA**” – an agreement meeting the requirements of Section 177-d of the RSSL and approved by the CRF as indicated on Schedule D (Master Securities Lending Agreement), entered into by the Contractor, as the CRF’s agent, and an Approved Borrower setting forth their obligations with respect to the loan of available CRF securities substantially in the form of the **[**Master Securities Loan Agreement, The Bond Market version 2000 (“**MSLA**”) or the Global Master Securities Lending Agreement, International Securities Lending Association version May 2000**]**, or any analogous or successor document as may be approved by the CRF, and as supplemented and amended from time to time, provided that any such supplement or amendment to an SLA previously approved by the CRF shall also be subject to CRF approval.

“**Securities Lending Contractor**” or “**Contractor”** –defined in the Introductory Clause as **[**“**Contractor Name”]**.

“**Security Procedure**” – the steps and processes to be followed by the CRF upon the issuance of an Instruction and/or by Contractor upon the receipt of an Instruction so as to enable Contractor to verify that such Instruction is authorized. A Security Procedure may, without limitation, involve the use of algorithms, codes, passwords, encryption, and telephone callbacks.

“**Service Level Document**” – the service level document between the CRF, Contractor, and Custodian, as supplemented and amended from time to time.

**“Staff”** – includes Contractor’s employees and its subcontractor’s employees providing Services, and includes Contractor’s owners, officers, directors, employees, subsidiaries, affiliates, partners and relevant contractors and third party service providers and their staff, meaning any entity providing the Services or that is permitted by the Contractor to process, store, access, transmit, receive, or come into contact with (for simplicity, “**access**”) Fund confidential information.

“**Term Loan**” – a Loan with a designated Return Date.

**“U.S.”** – United States of America.

1. **ENGAGEMENT OF THE CONTRACTOR; AUTHORIZATION**
2. **Engagement**. In reliance on the Contractor’s representations, warranties, and covenants set forth in Exhibit B (the Proposal) and herein, the CRF engages the Contractor to perform, and the Contractor agrees to provide, all Services and comply with all requirements as set forth herein and as required by the RFP (Exhibit A). The Contractor will not change or otherwise modify such Services, except to the extent that such changes or modifications are enhancements, without the prior written consent of the CRF (which consent may be granted or withheld by the CRF in its sole discretion). Contractor is authorized, as the CRF’s agent, to lend Available Securities to Approved Borrowers (as defined herein), and to perform such other lending services as may be required in relation thereto, and to receive performance by Approved Borrowers of their obligations under any SLA entered into with respect to Loans of Available Securities.
3. **Authorization**. The CRF hereby authorizes the Contractor to enter into all and any SLAs, Repurchase Agreements, or any other agreement entered into in accordance with this Agreement, as agent on the CRF’s behalf, and to open all accounts, as may be necessary to carry out the Contractor’s responsibilities under this Agreement, subject always to the requirements set out in this Agreement. All Loans of securities shall be made in accordance with such agreements, including the Service Level Document, as may be agreed upon, in writing, from time to time by the Contractor, the Custodian, and the CRF. In addition to the limitations set out in this Agreement, Contractor’s authorization to act on behalf of the CRF is subject to such other limitations imposed by the CRF and notified to Contractor in writing (which may be provided by email) from time to time.
4. **Non-Exclusive**. Contractor understands and agrees that nothing herein precludes the CRF from contracting with other securities lending agents to perform the same services (i.e., this Agreement is non-exclusive as to Contractor). The CRF reserves the right, in its sole discretion, to lend any or all Available Securities. This Agreement does not guarantee that any particular level or type of the CRF’s assets will be available for lending.
5. **AUCTION SERVICES**
6. **Authorization**. The CRF authorizes and directs the Contractor, on a fully disclosed basis, to solicit competitive bids from any one or more Approved Borrowers, and such other institutions as the CRF and the Contractor may agree from time to time, for the right of such Approved Borrower to borrow any or all Available Securities on such terms and conditions as the CRF shall specify to the Contractor from time to time.
7. **CRF-Specific**. The Contractor will create a specific section for the CRF on its auction website that is accessible only by Approved Borrowers and such other entities as the CRF and the Contractor may agree upon from time to time. Prior to each auction of the CRF’s Available Securities, the CRF will provide the Contractor with any terms applicable to the offering and loan of the CRF’s assets to Approved Borrowers as set out in this Agreement or otherwise provided by the Comptroller to the Contractor or requested by the Contractor from the CRF for each auction for posting on the auction website.
8. **Financial Analysis**. The Contractor will prepare a financial analysis of bids received in the auction process and make recommendations regarding Approved Borrowers and program options. The CRF will review the bid analysis and recommendations made by the Contractor and communicate the CRF’s determination of the bid awards and to which Approved Borrower(s) the CRF will loan Available Securities.
9. **ESLAs**. Upon the CRF advising the Contractor of its determination of bid awards in accordance with Section IV.C (Auction Services, Financial Analysis) of this Agreement, the Contractor shall, on behalf of the CRF, enter into one or more ESLAs using a form of ESLA previously approved by CRF with the Approved Borrower(s). At the request of the CRF, the Contractor shall provide the CRF with copies of such ESLAs, including any documents referred to therein, then in effect for each Approved Borrower.

The CRF agrees that the CRF shall be bound by each such ESLA and SLA entered into with each Approved Borrower as if the same were executed and delivered to each Approved Borrower directly by the CRF.

The CRF acknowledges that, under the applicable ESLA, the ESLA may be terminated as provided therein and the Approved Borrower(s) will be required to return any and all Loaned Securities within the time frames set out in the SLA upon receipt of notice terminating the applicable Loan. Upon receiving a notice from the CRF that an ESLA should be terminated in accordance with the contractual terms of the ESLA and/or Loaned Securities should no longer be considered Available Securities, the Contractor shall promptly notify the Approved Borrower which has borrowed such Loaned Securities that the ESLA and/or the Loan is terminated and that such Loaned Securities are to be returned within the times specified in the SLA.

The Contractor, upon deletion or restriction of an Approved Borrower listed in Schedule E (Approved Borrower List), shall proceed to terminate such ESLA(s) in accordance with the contractual terms thereof.

1. **SECURITIES LOANS; COLLATERAL GUIDELINES AND ACCOUNTS**
2. **Authorization**. During the term of a Loan, the Contractor is authorized to instruct the Custodian to transfer the Loaned Securities into the name of the Approved Borrower. The Contractor, in its capacity as agent for the CRF, will instruct that all Collateral be received and held for the benefit of the CRF by the Custodian, a sub-custodian, or a tri-party collateral custodian. The Contractor is authorized to enter into tri-party collateral custodian arrangements with recognized tri-party collateral custodians to undertake certain functions in connection with holding of Securities Collateral provided by an Approved Borrower on terms approved by CRF.
3. **Collateral** **Requirement**. The Contractor agrees to only accept Eligible Collateral as set forth in Schedule B (Eligible Collateral as of the Effective Date of this Agreement).
4. **Mark-to-Market**. The Contractor agrees to Mark-to-Market the Loaned Securities on a daily basis and to collect additional Eligible Collateral or return Collateral as may be necessary to comply with the Collateral Requirements.

1. **Approved Borrower Prohibition**. The Contractor shall not apply to be an Approved Borrower during the Term of this Agreement.
2. **Loans**. Loans may be Demand Loans or Term Loans. No Term Loans shall exceed one year. Each negotiation of a Rebate payable to an Approved Borrower or negotiation of a fee payable by an Approved Borrower for a securities loan shall constitute a new loan of securities. The Contractor shall promptly notify the CRF of Term Loans of Available Securities. The Contractor shall obtain the CRF’s prior approval for Term Loans of fixed income Available Securities and any such Loans shall be subject to and in compliance with the provisions established in Schedule C (Term Loans). Notwithstanding anything to the contrary contained in this Agreement or any SLA, all Term Loans are subject to the CRF’s rights to terminate such loans as set forth in this Agreement.

Contractor agrees that it will not initiate or maintain any outstanding Loans where the terms of such Loan or Loans are not commercially reasonable.

Contractor agrees that a Loan that is reallocated from another client to the CRF’s portfolio pursuant to this Agreement must meet all criteria that a new Loan is required to meet, including, but not limited to, loan term limits and the initial Eligible Collateral requirements defined in Schedule B (Eligible Collateral as of the Effective Date of this Agreement).

1. **Right to Restrict or Limit Loans**. The CRF shall have the right, upon prior written notification to the Contractor, to restrict any Loan or Loans. The CRF shall decide whether to maintain any such Loan and reserves the right to refuse to maintain any such Loan for any reason. The CRF shall have the right to instruct the Contractor to terminate any Loan at any time, unless otherwise agreed by the CRF prior to the initiation of any such Loan. Upon receiving a notice from the CRF that a Loan should be terminated, the Contractor shall immediately notify the Approved Borrower who has borrowed such Loaned Securities that the Loan is terminated and that such Loaned Securities are to be returned with the time frames specified in the SLA.
2. **Contractor Responsibilities**. The Contractor shall be responsible for (i) all securities loan and return transaction fees, as may be charged from time to time by Custodian in connection with lending Available Securities under this Agreement, that are not required to be paid by the applicable Approved Borrower, (ii) reimbursement for loss of use of funds charged by Custodian to the CRF’s account in respect of sale fails due to the failure of an Approved Borrower to return Loaned Securities covering the period beyond the standard settlement cycle for such Loaned Securities, provided that the CRF has provided or procured notification to the Contractor of any such sale and such notification is received by the Contractor on trade date in the local trading market of such Loaned Securities, (iii) reimbursement for costs that are not required to be paid by the applicable Approved Borrower and that are incurred by the CRF as a direct result of a buy-in that has occurred due to the failure of an Approved Borrower to return Loaned Securities in accordance with the standard settlement cycle for such Loaned Securities, provided that the CRF has provided or procured notification to the Contractor of (a) any sale of such Loaned Securities and such notification is received by the Contractor on trade date in the local trading market of such Loaned Securities and (b) a pending or executed buy-in as soon as reasonably practicable after receipt by the CRF or Custodian of a buy-in threat letter or buy-in notice relating to such buy-in, (iv) reimbursement for loss of use of funds charged by Custodian to the CRF’s account in respect of Distributions collected by the Contractor after the contractual payment date and (v) any additional fees charged by Custodian which the Contractor may agree to pay from time to time in connection with lending Available Securities under this Agreement. Except as set forth in this Agreement, the Contractor shall not be required to expend or risk its own funds in the performance of its duties hereunder.

1. **CASH MANAGEMENT; REPURCHASE TRANSACTIONS**
2. **Authorization**. The Contractor is authorized to invest and reinvest any cash Collateral, subject to its fiduciary responsibilities and other obligations to the CRF as required by this Agreement, and to enter into a tri-party custodial arrangement with a recognized tri-party custodial agent on the CRF’s behalf to undertake certain functions in connection with such investments on terms as approved by the CRF. Contractor shall have no authority to invest or reinvest any cash Collateral investment except (i) as expressly stated in Schedule A (Fund’s Cash Collateral Investment Guidelines), or (ii) as otherwise approved in advance and in writing by the CRF.

During the term of any Repurchase Transaction, the CRF authorizes Contractor, on behalf of the CRF, to instruct the Custodian (or tri-party custodial agent, as applicable) to transfer the cash Collateral to the Approved Repo Counterparty. For each Repurchase Transaction, the Approved Repo Counterparty shall transfer Repurchase Transaction Collateral to the CRF in an amount determined by applying the Repurchase Margin Percentage to the cash Collateral to be reinvested, in accordance with the Repurchase Agreement, but subject to the terms of this Agreement. The Repurchase Margin Percentage for Repurchase Transactions shall be at least equal to the percentage set forth in Schedule A for each type of Repurchase Transaction Collateral. All Repurchase Transaction Collateral will be held for the benefit of the CRF by the Custodian, a sub-custodian or a tri-party collateral custodian, on terms as approved by the CRF.

1. **Reduction of Collateral**. The CRF agrees that to the extent any losses from investing and reinvesting cash Collateral in accordance with Schedule A of this Agreement reduce the amount of cash Collateral below the amount required to be returned to the Approved Borrower upon the termination of any Loan (after giving effect to any Rebate on cash Collateral due to the Approved Borrower), upon at least two Business Days’ advance notice by the Contractor to the CRF and the Custodian, the CRF will promptly deposit in the Custody Account (for transmission to such Approved Borrower) an equivalent amount in cash in the relevant currency, except to the extent such losses are allocated to the Contractor as provided in Section XI (Events of Default). The Contractor is hereby authorized and instructed to effect any required liquidation or redemption of cash Collateral investments to satisfy the CRF’s obligation to return cash Collateral pursuant to a Mark-to-Market requirement or upon termination of any Loan. All proceeds and earnings derived from such investment shall be deposited in the Custody Account unless otherwise directed by the CRF.

1. **OVERDRAFTS; CONTRACTOR’S RIGHTS AND LIMITATIONS**
2. **Required Security Interest**. Contractor, as agent for the CRF, shall secure from each Approved Borrower no less than a perfected first priority security interest in all Collateral for loans of securities made by the CRF pursuant to the applicable SLA.
3. **No Ownership, Not a Contractor Asset**. The Contractor understands and agrees that it has no ownership right to any cash, securities, or other Collateral and, moreover, such shall not be considered an asset of Contractor at any time during this Agreement, including when any securities may be on loan.
4. **Waiver**. Except as otherwise set out in Section XI(E) (Events of Default, Reduction of AmountsPayable) of this Agreement, the Contractor, in its capacity as agent for the CRF, and in its individual capacity, hereby waives any right of set-off or recoupment that it may have or obtain against the CRF with respect to any Custody Account or any financial assets held therein or credited thereto.
5. **Termination Procedures**. Upon termination of a Loan in accordance with the SLA, the Contractor shall instruct the Approved Borrower to return the Loaned Securities to the Custody Account and shall advise the Custodian to receive the same. The Contractor shall, in its capacity as agent, redeem any cash Collateral invested pursuant to Schedule A, and effect the return of Collateral due to the Approved Borrower in accordance with the SLA. The Contractor agrees to provide to the CRF a report of the amount of Rebate owed to an Approved Borrower and shall direct the Custodian to pay to Approved Borrowers any Rebates or other fees or amounts due to the Approved Borrower from the cash in the Custody Account. The CRF acknowledges and agrees that its obligation to pay to the Approved Borrower the Rebate in respect of any Loan is independent of the results of investment of the related cash Collateral.

1. **SECURITIES LENDING AGREEMENTS (“SLAs”)**
2. **Lending Limitations**. The Contractor shall not lend Available Securities to any Approved Borrower unless it has first entered into an SLA with that Approved Borrower, or as otherwise mutually agreed, in advance and in writing, by the Contractor and the CRF. All Loans arranged by the Contractor on behalf of CRF must comply with any applicable Securities and Exchange Commission (“**SEC**”) guidelines for securities lending, any applicable SEC exemptive orders or no-action positions taken by the staff of the SEC with respect to securities lending transactions, but only to the extent that such guidelines, orders, or positions apply to the Contractor, the Contractor’s performance of its obligations under this Agreement, or the CRF and the investment restrictions and/or guidelines applicable to the CRF. The Contractor shall, promptly upon request, provide to the CRF a copy of each SLA and any amendments thereto which may apply to Loans hereunder. Unless specified otherwise in this Agreement, the Contractor shall have, with respect to any Loan made for the account of the CRF, all of the powers, authorities, and responsibilities under an SLA that are provided to the Contractor under this Agreement, including, without limitation, the authority to continue or to terminate a Loan. The Contractor shall possess and exercise such powers, authorities, and responsibilities in a manner consistent with the Contractor’s responsibilities to the CRF under this Agreement including, without limitation (i) marking Loans to market; (ii) collecting all (a) Collateral, and (b) all interest and other distributions (including, without limitation, Distributions) payable by Approved Borrowers, and instructing the same to be deposited in the applicable Custody Account or otherwise credited to CRF as directed by the CRF; and (iii) exercising remedies of the CRF upon the occurrence of an Event of Default by an Approved Borrower. The Contractor represents, warrants, and covenants that each Loan hereunder will be made pursuant to and in accordance with the applicable SLA.
3. **Securities or Qualified Financial Contract**. The Parties hereto intend that any Loan made to an Approved Borrower that is an “**insured depository institution**,” as defined by the Federal Deposit Insurance Act (“**FDIA**”), as amended, will qualify as a “**securities contract**” and “**qualified financial contract**,” as such terms are defined by the FDIA. Accordingly, on any SLA in effect with such an institution, the Contractor shall require written representations from the Approved Borrower confirming that: (i) the institution has been authorized by all necessary corporate action to enter into the SLA; and (ii) the SLA constitutes an obligation enforceable against the Approved Borrower.
4. **Authorization**. Subject to the limitations set forth in Section VIII.A (Securities Lending Agreements (“SLAs”), Lending Limitations), the Contractor is authorized by the CRF to negotiate on the CRF’s behalf with each Approved Borrower the terms of a Loan, including the amounts or fees to be received or paid, so long as such terms are commercially reasonable, in accordance with the terms of this Agreement, and the SLA.
5. **Contractor Responsibilities**. Contractor will ensure that any requirements or obligations applicable to Approved Borrowers under this Agreement, or as may be otherwise specified by CRF to Contractor in writing, are implemented and enforced with respect to each Loan.
6. **Status as Approved Borrower**. The Comptroller may, in his sole discretion and subject to separate terms and conditions that must be mutually agreed upon by the Parties, permit the Contractor to be an Approved Borrower under this Agreement; however, the Comptroller shall have no obligation to Contractor to allow such an arrangement and this subsection E creates none. Contractor hereby notifies CRF that it does not intend to request to become an Approved Borrower.

1. **DISTRIBUTIONS, VOTING RIGHTS, AND SALES WITH RESPECT TO SECURITIES**

Notwithstanding any provisions of any SLA to the contrary, the Approved Borrowers and the Contractor shall comply with the following:

1. **Voting Rights**. Contractor shall provide the CRF with reports detailing upcoming record dates on Available Securities and provide other monitoring services relating to CRF’s right to exercise its right to vote the Available Securities. Contractor shall recall each Loaned Security that is a Domestic Security within ten (10) days prior to the record date of such Loaned Security for CRF to exercise its voting rights with respect to the Loaned Security and, upon receipt, cause any such security to be re-transferred to the applicable account by record date for CRF to exercise its voting rights. The CRF reserves the right to require that the Contractor recall any Loaned Security that is a Non-Domestic Security by providing written notice delivered to the Contractor no later than the tenth (10th) calendar day immediately preceding any record date for exercising voting rights on such Non-Domestic Security and instruct such security to be re-transferred to the applicable account by the record date for CRF to exercise its voting rights. Contractor agrees to maintain at all times in the account of the CRF: (i) $4,000 in market value of each Domestic Security, and (ii) at least one (1) share of each Non-Domestic Security. Contractor agrees that no Available Securities included in Schedule H (Restricted List, as may be amended from time to time by CRF by notice to Contractor) may become a Loaned Security unless CRF has provided prior written consent.
2. **No Dividend Reinvestment Program**. The CRF acknowledges that it shall not be entitled to participate in any dividend reinvestment program with respect to Loaned Securities.
3. **Rights Regarding Distributions**. The CRF shall retain the right to collect from an Approved Borrower all Distributions, without regard to any tax that may be deducted or paid, including in accordance with applicable double taxation treaties, by the Approved Borrower in respect of such Distributions; and, in furtherance of the foregoing, the Contractor shall monitor withholding rates in respect of such Distributions. The CRF acknowledges that any payments from the Approved Borrower to the CRF in substitution for Distributions, without regard to any such taxes referred to in the immediately preceding sentence, shall be determined as of the date of the relevant payment and no adjustment shall be made to amounts paid by the Approved Borrower to the CRF as a result of (i) any retroactive change in applicable law which is announced or enacted after the date of the relevant payment or (ii) any decision of a court of competent jurisdiction which is made after the date of the relevant payment (other than where such decision results from an action taken with respect to the relevant SLA or amounts paid or payable under the relevant SLA).
4. **Non-cash Distributions**. The following procedures shall apply to Distributions which are not cash Distributions (“**non-cash Distributions**”), unless an alternative process is required by, or agreed to with, the CRF and the Custodian:
   1. Any non-cash Distribution which is in the nature of a stock split or a stock dividend shall, in accordance with the SLA, be in the best interest of the CRF and at the option of the Contractor: (a) be added to the existing Loan to which that Distribution relates as of the date that non-cash Distribution is paid and shall be subject to the provisions of this Agreement and the applicable SLA; or (b) be delivered by Approved Borrower, without regard to any such taxes referred to in the first sentence of Section IX.C (Distributions, Voting Rights, and Sales With Respect to Securities, Rights Regarding Distributions) for credit to the CRF.
   2. Any non-cash Distribution which is in the nature of warrants or rights to purchase shares made with respect to any securities on loan shall be deemed to be a new Loan made by the CRF to the Approved Borrower (and shall be considered to constitute securities on loan) as of the date that non-cash Distribution is distributed and shall be subject to the provisions of this Agreement; provided that the CRF may, by giving the Contractor adequate notice prior to the date of that non-cash Distribution, direct the Contractor to request that the Approved Borrower deliver that non-cash Distribution for credit to the CRF under the applicable SLA, in which case the Contractor shall credit that non-cash Distribution to the applicable Custody Account. In the event that the CRF wishes to exercise any such warrants or rights while they are on loan, the CRF shall instruct the Contractor prior to the applicable cut-off time to direct the Approved Borrower to deliver the applicable Loaned Security or other property issuable upon the exercise of such warrant or right to the applicable Custody Account in exchange for the price specified in the warrant or right.
5. **Sales**. Notwithstanding the provisions of Sections III (Engagement of the Contractor; Authorization) or VIII (Securities Lending Agreements (“SLAs”)) or any provision of an SLA to the contrary, if Loaned Securities are to be sold by the CRF or one of its agents, written Instructions (which may include a sales ticket from the CRF or one of its agents or some other form as mutually agreed between CRF and Contractor) shall be given to the Contractor to such effect no later than the applicable cut-off time. Contractor shall promptly give the Approved Borrower notice of termination of the applicable Loan. In the event that the Approved Borrower fails to return Loaned Securities within the times specified in the SLA, Contractor shall promptly notify the CRF and take action as provided in Section XI.B (Events of Default, Borrower Failures) of this Agreement.

1. **REQUIRED COLLATERAL; REPORTING**
2. **Mark-to-Market**. The Contractor shall Mark-to-Market the Loaned Securities on a daily basis, and where applicable, shall make a demand under the applicable SLA requiring the Approved Borrower to post additional Eligible Collateral to maintain the Collateral Requirement in accordance with the SLA.
   1. The marks-to-market for Loaned Securities pursuant to this Section X (Required Collateral; Reporting) shall be performed taking into account currency fluctuations in accordance with the SLA.
   2. Contractor shall require Eligible Collateral as required by this Agreement.
3. **Reports**. The Contractor shall provide to the CRF by 2:00 p.m. of each Business Day (New York City time) a report in substantially the form of Contractor’s daily report, to be attached as Schedule G hereto (Sample Form of Daily Report) for each Approved Borrower, together with such other reports as the CRF may reasonably request from time to time. The Contractor will deliver to the CRF: (i) a daily statement of activity setting forth information relating to Loaned Securities, marks-to-market and terminations; (ii) on or about the seventh Business Day of each month, except with respect to income information which will be received on or about the fifteenth day of the following month, a statement indicating for the preceding calendar month the securities lent from the Custody Account, the value of such securities, the nature and amount of Collateral received as security for the Loaned Securities, the income received (or loss incurred) from such invested Collateral, the amounts of any fees or payments paid with respect to each Loan and such other information as the Contractor and the CRF may agree to from time to time; and (iii) any other statements as may be reasonably requested by the CRF.

The Contractor shall provide the CRF with timely, accurate reporting in the form agreed to by the CRF. The Contractor shall provide the CRF such other reports pertaining to the Services, within specified periods of time, as the CRF may reasonably request.

1. **EVENTS OF DEFAULT**
2. **Contractor Responsibilities**. The Contractor shall promptly notify the CRF of the occurrence of an Event of Default by an Approved Borrower under any SLA or by an Approved Repo Counterparty under the Repurchase Agreement. Upon the occurrence of any such Event of Default, the Contractor, as agent for the CRF, shall promptly pursue all remedies against the Approved Borrower provided for under the applicable SLA and/or Approved Repo Counterparty under the Repurchase Agreement or otherwise available under law as may be necessary or appropriate under the circumstances to protect the CRF’s rights; provided, however, that CRF may, upon prior written notice to the Contractor, pursue any such remedies on its own behalf with respect to an Event of Default by an Approved Borrower or an Approved Repo Counterparty. If the CRF provides notice to Contractor pursuant to the prior sentence, the Contractor shall take no further action as contemplated by this Section XI (Events of Default) and, the Contractor shall not be liable to the CRF for any claims, demands, liabilities, costs, expenses, fees, damages, losses, judgments, settlements, penalties, fines, obligations, suits, proceedings and/or actions, whether judicial, administrative, investigative, or otherwise of any kind whatsoever that arise in connection with, or as a result of, the applicable Approved Borrower’s or Approved Repo Counterparty’s Event of Default or the CRF’s pursuit of such remedies on its own behalf. For the avoidance of doubt, the Contractor shall remain obligated to perform its duties under this Agreement which are not affected by the CRF’s pursuit of remedies on its own behalf with respect to the relevant Event of Default by an Approved Borrower or an Approved Repo Counterparty in accordance with this paragraph.
3. **Borrower Failures**. If, at the time of an Event of Default of an Approved Borrower, such Approved Borrower fails to return any Loaned Securities by the applicable Return Date or has failed to make a margin payment under the applicable SLA, and Contractor has not received a notice from the CRF in accordance with SectionXI.A (Events of Default, Contractor Responsibilities). above, Contractor shall:
4. promptly notify the CRF and take action, subject to applicable law, which it deems necessary or appropriate in accordance with the applicable SLA and general market practice and the Contractor’s reasonable judgment, including, but not necessarily limited to, claiming compensation from that Approved Borrower on behalf of the CRF in the event a trade executed by the CRF fails on account of that Approved Borrower’s failure to have returned securities on loan in a timely manner or, other action as may be permitted by the applicable SLA and as approved by the CRF;
5. purchase Equivalent Securities by liquidating, or causing the liquidation of, the Collateral and applying the proceeds of such Collateral to the purchase of such Equivalent Securities and deposit such Equivalent Securities in the Custody Account of the CRF, as soon as practicable. If and to the extent that such proceeds are insufficient, the Contractor shall pay such additional amounts as are necessary to purchase such Equivalent Securities; provided however that Contractor shall not be liable for any Collateral deficiencies as a result of losses on the investment of cash Collateral invested in accordance with Schedule A, except as provided in this Section XI (Events of Default);
6. if the Contractor is unable to obtain any, or all, replacement securities as provided herein or otherwise determines that the purchase of Equivalent Securities is commercially impracticable, the Contractor shall credit the Custody Account of the CRF in U.S. dollars with (a) the Market Value of such unreturned Loaned Securities, such Market Value being determined as of Close of Business on the date of the Event of Default, minus (b) the amount of any Collateral deficiencies resulting from losses on the investment of cash Collateral invested in accordance with Schedule A, except as provided in this Section XI (Events of Default). Any credits required under this Section XI.B(3) (Events of Default, Borrower Failures, subsection 3) shall be made by application of the proceeds of the Collateral (if any) that remains after the purchase of Equivalent Securities pursuant to Section XI.B(2) (Events of Default, Borrower Failures, subsection 2) and, if the proceeds are less than the value of the credits required to be made, such credit shall be made at Contractor’s expense;
7. In addition to making the purchases or payments required above, the Contractor shall pay from the proceeds of Collateral to the CRF the value of all Distributions on the Loaned Securities, the record dates for which occur before the date that the Contractor purchases Equivalent Securities or makes the payments to the CRF required pursuant to Section XI.B(3) (Events of Default, Borrower Failures, subsection 3) and that have not otherwise been credited to the CRF’s account. For purposes of this Section XI.B(4) (Events of Default, Borrower Failures, subsection 4)*,* the value of such Distribution shall be calculated net of expenses or other deductions that would normally apply to such Distributions had the Distributions been made directly to the CRF by the relevant Approved Borrower, and without regard to any such taxes referred to in the first sentence of Section IX.C (Distributions, Voting Rights, and Sales with Respect to Securities, Rights Regarding Distributions). The Contractor shall use Collateral or the proceeds of such Collateral to the extent available to make such payments of Distributions, and thereafter, if the Collateral liquidation proceeds are insufficient to cover the value of Distributions on the Loaned Securities as described in this Section XI.B(4) (Events of Default, Borrower Failures, subsection 4), the Contractor shall pay such additional amounts as are necessary to reimburse the CRF for the value of such Distributions;
8. If, on the date of the Event of Default by reason of the CRF’s or Custodian’s request or actions, the Contractor does not have access to the Collateral allocated to the defaulted Loan, as a condition precedent for any payments made by Contractor pursuant to Section XI.B (Events of Default, Borrower Failures) the CRF shall promptly provide Contractor with access to such Collateral, or the proceeds from the liquidation of such Collateral by the time and date reasonably specified by Contractor.
9. **Approved Repo Counterparty Failures**. If, at the time of an Event of Default of an Approved Repo Counterparty, such Approved Repo Counterparty fails to return the cash Collateral invested or fails to make a margin payment under the applicable Repurchase Agreement, Contractor shall:
10. promptly notify the CRF and take action, subject to applicable law, which it deems necessary or appropriate in accordance with the applicable Repurchase Agreement and general market practice and the Contractor’s reasonable judgment;
11. liquidate, or cause the liquidation of, the Repurchase Transaction Collateral in accordance with the applicable Repurchase Agreement. If, and subject to the setoff provisions contained in Section XI.E (Events of Default, Reduction of Amounts Payable), the proceeds are less than the amount of cash Collateral invested, the Contractor shall pay to the CRF such additional amounts as are necessary to satisfy any shortfall; and
12. If, on the date of the Event of Default by reason of the CRF’s or Custodian’s request or actions, the Contractor does not have access to the Repurchase Transaction Collateral allocated to the defaulted Repurchase Transaction, as a condition precedent for any payments made by Contractor pursuant to Section XI.C (Events of Default, Approved Repo Counterparty Failures), the CRF shall promptly provide Contractor with access to such Repurchase Transaction Collateral by the time and date reasonably specified by Contractor.
13. **Liability Limitations**. Under no circumstances shall the Contractor’s obligation to the CRF under Sections XI.B (Events of Default, Borrower Failures) and XI.C (Events of Default, Approved Repo Counterparty Failures) exceed the actual loss incurred. The Contractor shall have no other liability to the CRF relating to (i) any Approved Borrower’s Event of Default under the SLA, or (ii) any Approved Repo Counterparty’s failure to return the cash Collateral invested or failure to make a margin payment in connection with its obligations under the Repurchase Agreement; in each case, other than set out in this Agreement.
14. **Reduction of Amounts Payable**. The Contractor shall be entitled to reduce amounts payable to the CRF pursuant to either Section XI.B. (Events of Default, Borrower Failures) or XI.C (Events of Default, Approved Repo Counterparty Failures) where the relevant Approved Borrower and relevant Approved Repo Counterparty are the same entity by setting off (i) any excess proceeds or shortfall that results from the liquidation of Repurchase Transaction Collateral, against (ii) any excess Collateral or shortfall in Collateral where Equivalent Securities are purchased or where cash is credited to the CRF in lieu of purchasing Equivalent Securities.
15. **Contractor Payments**. If the Contractor is required to perform or make any payment as provided in this Section XI (Events of Default), the Contractor shall then, only to the extent of such performance or payment, be subrogated to, and the CRF shall without further action be deemed to have assigned to the Contractor, all rights of the CRF against such Approved Borrower and/or Approved Repo Counterparty, or any guarantor of the Approved Borrower and/or Approved Repo Counterparty only to the extent of such performance or payment. If the CRF receives or is credited with an acceptable payment, benefit, or value from or on behalf of an Approved Borrower and/or Approved Repo Counterparty, or any guarantor of the Approved Borrower and/or Approved Repo Counterparty, including pursuant to any netting provision or netting agreement, in respect of rights to which Contractor is subrogated as provided herein, the CRF shall remit or pay to Contractor the same (or its dollar equivalent).
16. **CRF Not Responsible**. The CRF shall not be responsible for (i) any securities loan and return transaction fees as may be charged from time to time by the Custodian in connection with lending Available Securities under this Agreement, (ii) transfer taxes which may be charged in connection with the transfer of the Loaned Securities or non-cash Collateral by the CRF to the Approved Borrower or by the Approved Borrower to the CRF, as applicable, or (iii) transfer taxes which may be charged in connection with the transfer of the Purchased Securities or Repurchase Transaction Collateral by the CRF to the Approved Repo Counterparty or by the Approved Repo Counterparty to the CRF, as applicable.
17. **Contractor Collateralization**. To the extent applicable, the Contractor understands and agrees that it is obligated to collateralize any sweep and other deposits held by the Contractor for the benefit of CRF to the extent that such occurred on a Business Day, which Collateral must be at levels established by the Collateral Requirements.
18. **ACTING ON INSTRUCTIONS**
19. **Acting on Instructions**
20. The CRF authorizes the Contractor to accept, rely upon, and/or act upon any Instructions that the Contractor receives from the CRF that are reasonably believed by Contractor to be genuine and to have been properly executed or otherwise given by an Authorized Person, and provided that the Contractor carries out such Instruction without negligence, gross negligence, fraud, or willful misconduct, and otherwise in accordance with its obligations as a fiduciary.
21. Instructions may be in writing signed by an Authorized Person or by such other means as may be agreed upon, in advance and in writing (which may be provided by email), from time to time by the Contractor and the CRF. The CRF will, where reasonably practicable, use automated and electronic methods of sending Instructions.
22. The Contractor shall promptly notify an Authorized Person if the Contractor determines that an Instruction does not contain all information reasonably necessary for the Contractor to carry out the Instruction or reasonably suspects that such instruction is inaccurate, unauthorized, or fraudulent.
23. **Verification and Security Procedures.** The Contractor and the CRF shall comply with any applicable Security Procedures with respect to the delivery or authentication of Instructions and shall ensure that any codes, passwords, or similar devices are reasonably safeguarded. Either Party may record any of their telephone communications. Unless otherwise agreed between the Contractor and the CRF, all Instructions shall be in writing or by such other means as may be agreed upon, in advance and in writing (which may be provided by email) by the Contractor and the CRF. The CRF shall cause its Authorized Persons to certify to the Contractor, in writing, the names and specimen signatures of Authorized Persons. The Contractor shall be entitled to rely upon the identity and authority of such Authorized Persons until it receives and has had reasonable time to act upon Instructions from the CRF or its Authorized Person to the contrary. Unless otherwise expressly provided, all Instructions shall continue in full force and effect until canceled or superseded.
24. **STANDARDS OF CONDUCT**

Contractor acknowledges that it owes the Comptroller and the CRF a fiduciary duty in the performance of Services under this Agreement. The following sets forth the Contractor’s Standards of Conduct:

1. **Contractor Obligations**. The Contractor shall:
2. act with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
3. be governed by the highest standard imposed by:
   1. the standards in effect from time to time under federal and state law that apply to persons and entities serving in a similar capacity with respect to the Comptroller or the CRF (including, without limitation, the standards set forth in 11 NYCRR Subpart 136-2 and RSSL §177-d (without regard to 3b of §177-d), attached as Appendices D and E respectively, to the extent any such standard is applicable to the Contractor in the discharge of its duties under this Agreement), as they may be amended from time to time or any successor provisions;
   2. Sections 404 and 406 of ERISA (as if the CRF were an employee benefit plan subject to ERISA, including Title I thereof, and not a governmental plan within the meaning of Section 3(32) of ERISA); and
   3. any other federal or state law affecting the Comptroller or the CRF that may impose a higher or comparable standard to the extent any such law is applicable to the Contractor in the discharge of its duties under this Agreement.
4. **CRF Rights**. Except as may have been expressly provided herein, nothing in this Section XIII.B (Standards of Conduct, CRF Rights) shall be construed to limit or waive any rights the CRF may have pursuant to this Agreement. Nothing herein shall limit the CRF’s right to pursue any remedy under applicable law.

1. **CONFLICTS OF INTEREST AND COMPLIANCE**

1. **No Material Conflicts**. Contractor covenants and represents that the Contractor and its Staff currently have no conflict of interest, and shall make reasonable efforts to ensure that there shall be no conflict, with respect to the Services and Contractor’s obligations and duties: (i) under any other agreement to which it is a party or by which it is otherwise bound; or (ii) with respect to any other engagement of the Contractor or activity in which Contractor is involved.

During the Term of this Agreement, Contractor shall immediately notify the CRF, in writing, whenever it becomes aware of any situation that involves or appears to involve such a conflict of interest, or potential conflict that arises during the Term of this Agreement and will immediately recuse itself from its duties hereunder that give rise to such conflict of interest unless the CRF specifically waives such conflict in writing. The CRF may, in its sole discretion, dismiss the Contractor from any or all of its duties hereunder upon the occurrence of an actual or perceived conflict of interest and may also terminate the Agreement.

1. **Filing Requirement**. Contractor agrees to file annually with the CRF a statement acknowledging that it is aware of and in compliance with the above duty to disclose which statement will contain the following language:

“ALL INVESTMENT MANAGERS, AND CONSULTANTS OR ADVISORS OWE THE COMPTROLLER AND THE COMMON RETIREMENT FUND A FIDUCIARY DUTY. THIS MEANS THAT INVESTMENT MANAGERS, OR CONSULTANTS OR ADVISORS MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITIES.”

1. **Annual Questionnaire**. The Contractor agrees to complete an annual compliance questionnaire, which may change from year to year, and must be submitted electronically after receiving notification and instructions from the Director of Compliance. If the Contractor fails to complete the compliance questionnaire in a timely manner, the CRF shall have the option, in its sole discretion and without liability to the Contractor, or any third party, to terminate this Agreement. Such termination shall be deemed, for purposes of this Agreement, a termination for cause.
2. **Compliance With Policy Regarding the Independence of Contractors Providing Investment Advisory Services**. At all times during the term of this Agreement, the Contractor shall comply with CRF’s Policy Regarding the Independence of Contractors Providing Investment Advisory Services (Appendix I) and shall not seek any investment by or from the CRF with respect to any transaction sponsored by the Contractor or any affiliate thereof unless specifically requested by the CRF’s Chief Investment Officer. The Contractor shall maintain policies and procedures designed to ensure compliance with the foregoing policy.

1. **ETHICS OBLIGATIONS**

The Contractor certifies that:

* 1. **Public Officers Law Sections 73 and 74**. The Contractor, and those assigned by the Contractor to perform Services under this Agreement, have read and understand the provisions of Public Officers Law §73 and §74 including without limitation:
     + 1. the provisions of §73 (subd 5) which provides that (i) no Statewide elected official, State officer or employee, individual whose name has been submitted by the Governor to the Senate for confirmation to become a State officer or employee, member of the Legislature, or legislative employee (for the purposes of this Section XV (Ethics Obligation), each an “**Individual**”) shall, directly or indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence the Individual, or could reasonably be expected to influence the Individual, in the performance of the Individual’s official duties or was intended as a reward for any official action on the Individual’s part; and (ii) no person shall, directly or indirectly, offer or make any such gift to a Statewide elected official, or any State officer or employee, member of the Legislature, or legislative employee under such circumstances (clauses (i) and (ii) collectively, the “**Gift Restrictions**”).
       2. the provisions of §73 (subd 8), which sets out (i) a two-year bar on a State employee from appearing before the State employee’s former agency after leaving State service, and (ii) a life-time bar on a State employee from rendering services on any matters with respect to which the State employee was directly concerned during State service and in which the State employee personally participated, or which was under the State employee’s active consideration during State service.

* 1. **Gift Restriction Certification**. The Contractor and its Staff shall not: (i) offer or provide any gift or hospitality to a State employee in violation of said Gift Restrictions, (ii) assign any former State employee to appear before the New York State Office of the State Comptroller (“**OSC**”), the System or the CRF to perform Services in violation of the two-year bar, or (iii) assign any former State employee to the render Services in violation of the lifetime bar. This certification is material to the Agreement and the Fund intends to rely on it.
  2. **Reporting Requirement**. The Contractor must promptly report to the CRF any non-compliance with the above requirements to:

Office of the State Comptroller

110 State Street – 14th Floor

Albany, New York 12236

Attn: Special Counsel for Ethics

and

Office of the State Comptroller

110 State Street – 14th Floor

Albany, New York 12236

Attn: Fund Director of Compliance

* 1. **No Compensation**. The Contractor represents and warrants that neither the Contractor nor its Staff has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party, including any subcontractor, in connection with the indirect or direct procurement of this Agreement.
  2. **Internal Controls**. The Contractor shall maintain risk management and oversight policies and procedures designed to ensure compliance with applicable laws and regulations. To the extent applicable to Contractor, the Contractor shall provide the Services in compliance with the Federal Financial Institutions Examination Council Supervisory Policy on Securities Lending as amended from time to time.
  3. **Additional Reporting Requirements**. The Contractor shall promptly report in writing to the CRF whenever the Contractor becomes aware of (i) the occurrence of any activity which constitutes a breach of this Agreement, or (ii) a violation by the Contractor of any applicable law or regulation in connection with this Agreement. Such report shall specify the event(s), the measures taken to resolve or rectify the effect of such event, and the timeframe for undertaking such resolution.

1. **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE CONTRACTOR**

The Contractor hereby represents, warrants, covenants, and acknowledges that:

* 1. **Contractor Organization**. The Contractor is an entity duly organized, validly existing, and in good standing under the laws of the State of [STATE], and has authority to conduct business in the State of New York.

* 1. **Contractor Obligations**. The Contractor and its Staff have completed, obtained all registrations, licenses, filing, insurance, and governmental approvals, if any, necessary to performance of their obligations under this Agreement. The Contractor and each of its Staff, to the extent required in order to perform the Services, (i) shall continue to do so for the duration of this Agreement, and (ii) shall comply with any requirements imposed upon the Contractor by law in connection with the Services during the Term of this Agreement.
  2. **DFS Review**. The Contractor shall submit to a review and respond in writing to any inquiry or request for information by the New York State Department of Financial Services (“**DFS**”) or the CRF concerning fees paid by and Services rendered hereunder.
  3. **Fiduciary**. The Contractor is a fiduciary acting for the benefit of the Comptroller and the CRF in the performance of Services under this Agreement.

* 1. **Expertise**. The Contractor possesses a high degree of skill and expertise with respect to the Services, and will maintain throughout the Term of this Agreement, a professional staff and facilities to perform the Services in a timely and professional manner. The Contractor and its Staff are properly qualified, experienced, licensed, equipped, organized, and financed to perform such Services.
  2. **Legal Compliance**. The Contractor, its owners, officers, directors, and Staff are not in violation of any federal or state laws or regulations and no charge, claim, investigation, suit, or proceeding before or by any court or regulatory agency is pending against any such person or, to the best knowledge of the Contractor, threatened, that could have a material adverse effect upon the performance of the Services.
  3. **No Affiliation**. The Contractor, its owners, officers, directors, and each of its Staff performing Services hereunder are not affiliated (as defined in Appendix D (Insurance Regulations, Official Compilation of Codes, Rules and Regulations of the State of New York, Chapter IV. Financial Condition of Insurer and Reports to Superintendent, Subchapter F. Public Retirement Systems, Part 136. Public Retirement Systems)) with the Comptroller, OSC, the System, or the CRF.
  4. **Authorization**. The Contractor has full power and authority to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly authorized by all requisite action on the part of the Contractor and constitutes the valid, legal, and binding obligation of the Contractor, enforceable against it in accordance with its terms.

* 1. **Notification**
     + 1. The Contractor shall notify the CRF in the most expedient time possible and without unreasonable delay after it has determined that an instance of fraud or suspected criminal activity has occurred in connection with the Services.
       2. The Contractor shall promptly notify the CRF of (i) the commencement of any governmental investigation, enforcement action (or settlement action in lieu thereof), prosecution, proceeding, or governmental (criminal or civil) litigation against the Contractor or any key Staff (excluding, in the case of key Staff, any family court matters or non-felony traffic offenses). (ii) the commencement of any civil action reasonably likely to have a material adverse effect on the Contractor or the Services, (iii) the occurrence of any activity which constitutes a material breach of this Agreement, (iv) a violation by the Contractor of any applicable law or regulation in connection with this Agreement, or (v) if during the Term of this Agreement Contractor has reason to believe that any representation or warranty made is or soon will be not true and correct. Such notice shall specify the event(s), the measures taken to resolve or rectify the effect of such event, and the expected timeframe for undertaking such resolution.
  2. **True and Correct**. All of the information, representations and warranties contained in Contractor’s Proposal were true at the time of submission and continue to be true as of the date hereof. Further, Contractor represents and warrants that no representation or warranty contained herein, nor any written statements, certificates or documents delivered or to be delivered to the CRF or the CRF’s designated representatives by or on behalf of the Contractor, contain or will contain any misstatements of material fact, or omit or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

1. **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE CRF**

The Contractor hereby represents, warrants, covenants, and acknowledges that:

* 1. **Organization**. The CRF is validly organized as a governmental plan under the laws of the State of New York.
  2. **United States Resident**. The CRF is a tax resident of the United States and will provide documentary evidence of its tax residence as reasonably requested. The CRF carries on its securities lending business solely through a permanent establishment in the United States and all payments received by it in connection with loans of Available Securities under this Agreement are attributable to such permanent establishment.
  3. **Authorization**. The Comptroller has full power and authority to enter into this Agreement and to perform the obligations hereunder. The Agreement has been duly authorized by all requisite action on the part of the Comptroller and the CRF and constitutes the valid, legal, and binding obligation of the Comptroller and the CRF, enforceable against it in accordance with its terms.
  4. **Ownership**. As to any Loaned Security, the CRF shall be the owner thereof with clear title thereto and no lien, charge, or encumbrance upon such Loaned Security shall exist.
  5. **Reporting**. The CRF reports income from securities lending as income from securities lending on its financial statements.
  6. **Status.** The CRF is engaged in securities lending on a regular and continuous basis in multiple global markets.
  7. **True and Correct**. If during the Term of this Agreement the CRF has reason to believe that any of its representations or warranties made hereunder is or soon will be not true and correct, the CRF agrees to notify the Contractor thereof as soon as practicable.

1. **RELATIONSHIP BETWEEN THE PARTIES**
   1. **Independent Contractor**. The relationship of the Contractor to the Comptroller and the CRF under this Agreement is that of an independent contractor. In accordance with such status, the Contractor covenants and agrees that it shall ensure that its Staff (defined above) providing Services hereunder shall: (i) act in a manner consistent therewith; (ii) neither hold themselves out as, nor claim to be, officers or employees of the CRF or the State; and (iii) not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the State including, but not limited to, worker’s compensation coverage, unemployment insurance benefits, social security coverage, or retirement system benefits.
   2. **Use of Subcontractors**. In the event that Contractor intends to use subcontractors or other entities to perform any of the Services (“**subcontractors**,” and incorporated into the definition hereunder of “**Staff**”), the Contractor shall disclose any such subcontractors to the CRF prior to the performance of any Services. The CRF shall have the right to approve or disapprove, after appropriate review and/or interview(s), any and all subcontractors of the Contractor prior to their performance of Services. Such approval shall be in the CRF’s sole discretion.

Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of the CRF, result in a disqualification of the subcontractor or termination of this Agreement. The Contractor shall require all proposed subcontractors to complete such Schedules, Appendices, or other documents included in this Agreement as are deemed necessary by the CRF prior to any such proposed subcontractor’s performance of Services. The Contractor acknowledges that this requirement is ongoing for the Term of this Agreement. Failure to disclose the identity of any and all subcontractors used by the Contractor together with a detailed description of their responsibilities may, at the sole discretion of the CRF, result in a disqualification of the subcontractor or termination of this Agreement.

Contractor shall be fully responsible to the CRF for the acts and omissions of Contractor and any Staff, whether directly or indirectly engaged in connection with the performance of this Agreement and their adherence to all contract terms and conditions.

* 1. **Subcontractor Agreements**. The Contractor shall include in all subcontractor agreements binding provisions that are at least as restrictive as those found in this Agreement, including, but not limited to:
     + 1. That nothing contained in such subcontract will impair the rights of the Comptroller or the CRF;
       2. That nothing contained in such subcontract will create any contractual relation between any subcontractor and Comptroller or the CRF; and
       3. That the subcontractor shall maintain all records with respect to Services performed in the same manner as required of the Contractor.
  2. **Limitations on Holding CRF Assets**. The Contractor agrees it will not enter into any arrangements with a subcontractor for holding CRF assets. Tri-party custodial arrangements entered into by Contractor, as approved by the CRF pursuant to the terms of this Agreement, will not constitute an arrangement with a subcontractor for holding of CRF assets in violation of the prior sentence.
  3. **No CRF Liability or Duty**. The Contractor agrees that nothing set forth in this Agreement shall impose any liability or duty upon the Comptroller or the CRF to persons, firms, corporations, employees, or others engaged by the Contractor in any capacity or shall make the Comptroller or the CRF liable to any person, entity, or government for the acts, omissions, liabilities, obligations, and/or taxes of whatever nature, including, but not limited to, worker’s compensation coverage, unemployment insurance benefits, social security coverage, retirement membership credit, disability benefits, and social security taxes. The Contractor will maintain workers’ compensation coverage and disability benefits in amounts equal to all statutory requirements during the term of this Agreement for the benefit of its employees.

1. **STAFF**
   1. **Assignment of Key Personnel.** The Contractor shall assign appropriate Staff to perform the Services, including a Relationship Manager and other key personnel. The CRF has final approval of key personnel furnished by Contractor to provide the Services, subject to the satisfactory completion of a background investigation as a condition precedent and as set forth herein and the RFP. The CRF may refuse to approve any such key personnel for any lawful reason, including based on its review of the key personnel’s performance of the Services, or determination that any key personnel is not performing in accordance with this Agreement. The CRF reserves the right to deny key personnel access to CRF data or facilities for any reasonable cause.

* 1. **Staff Integrity and Professional Capacity**. The Contractor certifies that Staff assigned to perform Services possess the necessary integrity and professional capacity to meet the CRF’s reasonable expectations. Subsequent to the commencement of Services, or whenever the Contractor becomes aware, or reasonably should have become aware, that any Staff providing Services to the CRF no longer possesses the necessary integrity or professional capacity, the Contractor shall immediately discontinue the use of such Staff and notify the CRF.
  2. **Substitutions**. Substitutions of key personnel shall not be made without CRF prior written approval by an Approved Person. The Contractor shall provide notice to the CRF as soon as practicable, but no less than fourteen (14) days before replacing such key personnel, and shall, within seven (7) days of such notice, provide resumes of potential replacement personnel. Such replacements’ skill level and experience must match or exceed the qualifications of personnel being replaced. The Contractor will ensure that there is no gap in the Services and that any replacement personnel receives appropriate transition information. All replacement key personnel remain subject to the background check requirements set forth herein.
  3. **FIRCA**. The Federal Immigration Reform and Control Act, as amended (8 USC §1324a et al.), obligates employers, such as the Contractor and any subcontractors, to verify that their United States-based employees are legally entitled to work in the U.S. To confirm that such employees are legally entitled to work in the U.S, the CRF reserves the right to request documentation attesting to such for any employees assigned to provide Services in the U.S. The Contractor warrants to the CRF that the employees assigned to provide Services in the U.S are eligible for employment in the U.S. The Contractor is responsible for ensuring that such employees retain the authorization to legally work in the U.S throughout the period for which they provide Services in the United States. The CRF does not discriminate against individuals on the basis of national origin or citizenship. The CRF does not provide sponsorship.

1. **COMPENSATION AND PAYMENT**
   1. **Fees**. The Contractor will be compensated for the satisfactory performance of Services accepted by the CRF in accordance with the Contractor’s Proposal, Exhibit B, attached hereto. No other costs, fees, interest, penalties, or other charges will be incurred or assessed by Contractor during the Term of the Agreement, including any extension of the Term.
   2. **Invoices and Documentation regarding Earnings and Fees.** Documentation regarding earnings and fees shall include this Agreement number [Agreement Number], Contractor’s taxpayer identification number, and the beginning and ending dates of the time period covered by the documentation. Documentation must be submitted within 30 days of delivery of Services via email to [PICMOperationsMailbox@osc.ny.gov](mailto:PICMOperationsMailbox@osc.ny.gov).
   3. **Records**. Contractor must maintain adequate records to substantiate all claims for payment and must make those records available in New York State for examination and copying.
   4. **Audit**. All payments hereunder shall be subject to audit by the Comptroller.
2. **[INDEPENDENT SERVICE AUDITORS’ REPORTS**

The Contractor shall provide to the CRF the Contractor’s independent service auditors’ report(s) (e.g., SOC reports, SSAE reports or superseded statements, as applicable) on its financial and operational controls relevant to the Services. The Contractor shall deliver such reports to the CRF promptly after their issuance which shall include an opinion on (i) whether the Contractor’s description of its controls presents fairly, in all material respects, certain aspects of the Contractor’s controls, (ii) whether the controls were suitably designed to achieve specified control objectives, and (iii) whether the controls that were tested were operating with sufficient effectiveness to provide reasonable, but not absolute, assurance that the control objectives were achieved. The CRF shall have the right to review any corrective measures undertaken pursuant to the reports. The CRF will have cause to terminate this Agreement, without any advance notice to the Contractor, if an examination or audit by the independent auditor reveals a material failure to perform or inadequate performance of the controls referred to in the reports, or if the Contractor has refused to provide the reports as required pursuant to this paragraph.**]**

1. **INSURANCE**

* 1. **Contractor Insurance Requirements**. Throughout the Term of this Agreement, the Contractor shall maintain insurance coverage consistent with industry best practices for the nature and scope of Services to be provided, including the following insurance:
* Errors & Omissions;
* Commercial General Liability;
* **[**Blanket Bond Coverage plus Computer Crime (covering Employee Dishonesty);
* Data Breach and Privacy/Cyber Liability, including coverage for failure to protect confidential information and failure of the security of the Contractor’s computer systems, which coverage must be without geographic or territorial limitation;
* Umbrella;**]** and
* Any other insurance required by law.

The Contractor shall provide the CRF with certificates of insurance showing its respective coverages and applicable limits (including applicable deductibles and self-insured retention amounts) prior to commencement of Services. If Contractor is self-insured for any portion of its insurance program, a letter indicating the coverage and limits of such self-insurance, signed by Contractor’s authorized representative with direct knowledge of and responsibility for Contractor’s insurance/risk management program, must be submitted.

* 1. **Additional Insureds/Loss Payee.** The Comptroller and the CRF must be additional insureds as to Commercial General Liability **[**Privacy/Cyber Liability, and Umbrella insurance and loss payee with respect to the Blanket Bond**]** Coverage. By requiring insurance, the CRF does not represent that Contractor’s coverage and limits will be adequate to respond to any loss or claim arising from or relating to the Services or to satisfy Contractor’s liability in relation thereto. Contractor’s availability of insurance coverage limits (whether through a third-party insurer or self-insured) or lack thereof will not be deemed a limitation on the Contractor’s liability to the Comptroller and the CRF under this Agreement.

1. **CONFIDENTIALITY AND SECURITY**

* 1. **Fund Confidential Information.** The Contractor and its Staff shall treat as confidential all information concerning the CRF and its investments disclosed to the Contractor in the course of providing Services, either verbally, electronically, visually, or in written or other tangible form which is either identified or should be reasonably understood to be confidential. CRF confidential information includes, but is not limited to, CRF trade data, bank account information, investments, investment strategies, investment guidelines, investment performance, proposed transactions, forecasts, financial information, documentation in respect of any of the foregoing, including legal agreements, and terms of such legal agreements, and any investment manager information or data as may be received from the CRF in connection with Contractor’s provision of the Services. “**CRF Data**” means any other information and electronic data pertaining to or related to the CRF that is maintained, processed, or transmitted by the Contractor, and includes CRF confidential information.
  2. **Use and Retention of Confidential Information**. The Contractor shall not reveal or use CRF Data without the prior written consent of the CRF and agrees that:

1. The Contractor shall use CRF Data solely for the purpose of carrying out its obligations to, or on behalf of, the CRF as set forth in this Agreement, and for no other purpose.
2. Promptly after the termination or conclusion of the Agreement, the Contractor must sanitize CRF Data so as to protect CRF confidential information, except where Contractor is required to retain CRF confidential information pursuant to applicable law. After the destruction of the CRF confidential information, an officer or principal of the Contractor must certify to the CRF, in writing and under penalty of perjury, that such destruction has been completed in accordance with the Office of Information Technology Services Policy for Sanitization/Secure Disposal in NYS-S13-003 or successor policy.

Subject to the foregoing limitations, the Contractor is specifically authorized to disclose to each Approved Borrower the CRF’s identity as the Client and CRF’s aggregate lendable assets. Any disclosure by the Contractor other than the identity of the CRF or the CRF’s aggregate lendable assets shall be made by the Contractor solely on a need-to-know basis for performance of the Services and must be subject to an agreement with the Approved Borrower receiving such information in such form and substance as the Contractor shall determine to be appropriate and otherwise consistent with industry practice, but that includes confidentiality provisions that are no less stringent than the requirements set forth herein.

* 1. **[Disclosure of CRF Data.** In the event of a receipt by Contractor of a valid order or mandatory request for CRF Data from a judicial, administrative, or governmental agency having jurisdiction over it, the Contractor must, unless prohibited by applicable law, promptly notify the CRF thereof. The Contractor must, to the extent practicable, meet with the CRF for purposes of discussing such order or request prior to the submission of a response thereto, and shall, except to the extent prohibited as a matter of law, cooperate and assist the CRF in responding to any such order or request.

*The Agreement will set forth a more detailed response model as to coordination between the Parties to address subpoenas or similar directives, including but not limited to the preparation and request of protective orders*.**]**

* 1. **Unauthorized Use or Disclosure**. Contractor acknowledges that any unauthorized use or disclosure of CRF Data may cause irreparable damage to the CRF. If an unauthorized use or disclosure occurs, the Contractor must, at its expense, take such steps that are necessary to recover CRF Data and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If the Contractor fails to take such steps in a timely and adequate manner, the CRF may take them at the expense of the Contractor.
  2. **Subcontractor Agreement**. The Contractor must ensure that any subcontractors, affiliates, and their agents, representatives, and employees understand and agree to be bound to the confidentiality and security restrictions and obligations set forth in the RFP and herein.
  3. **Compliance with the Law**. In performing the Services, the Contractor shall comply with: (i) all applicable international, federal, state, and local laws, rules, regulations, and governmental requirements now or hereafter in effect relating to the confidentiality or security of confidential information; (ii) all applicable industry standards concerning data protection, confidentiality and information security; (iii) all security policies, procedures, statutes, regulations, and directives set forth in RFP 24-04 or referenced herein; and (iv) any applicable OSC facility security policies and procedures provided to Contractor.

**[**The Contractor shall comply with the standards set forth in the DFS Regulations (including 23 NYCRR Part 500) applicable to the Contractor.**]**

* 1. **Data Security.** The Contractor represents and warrants that it has developed, implemented, and shall maintain comprehensive data security, disaster recovery, and business continuity programs (together, the “**Security Programs**”) reasonably designed to protect information and conduct its business in accordance with current industry standards and applicable law. The Contractor further represents and warrants that it will monitor its Security Programs and audit such Security Programs at least annually. The Contractor agrees to adjust its Security Programs as necessary in accordance with the results of such audits and to make its audit reports available to the Fund upon request.
  2. **Security Incident Notifications.**

1. To the extent not prohibited by applicable law, the Contractor shall notify the CRF promptly in writing upon the occurrence of any Security Incident in the most expedient time possible and without unreasonable delay, but in any event no later than within **[**48 hours**]** of such occurrence.

Any notice to the CRF under this Section XIII.H. (Confidentiality and Security, Security Incident Notifications) will be made by:

* + 1. Contacting OSC’s Information Security Office by telephone at 518-474-9487 and by email to: [iso@osc.ny.gov](mailto:iso@osc.ny.gov); and
    2. Contacting the CRF’s Director of Operations, Michael Kelly, by telephone at 518-375-8151 and by email at [mkelly@osc.ny.gov](mailto:mkelly@osc.ny.gov) (or such other contact which the CRF may provide in writing). Such notice shall include a description of:
       1. the scope of the Security Incident; identification of the vulnerability in the affected system and the amount of time that such vulnerability existed; identification of potentially compromised CRF Data; the last time that the attacker (if applicable) had access to the affected systems or CRF Data; the identity of any third parties or otherwise unauthorized entity that may have accessed or obtained CRF Data as a result of the Security Incident; and identification of any misuse of any CRF Data involved in the Security Incident; and
       2. the efforts taken to contain and mitigate the impact of the Security Incident, including any retention of an outside law firm or cyber firm to assist in the effort, the involvement of law enforcement, and a reasonably detailed summary of the results of the investigation of the Security Incident. The Contractor shall provide prompt updates to the CRF of additional information discovered in the course of its investigation.

1. It is expressly agreed that the Contractor shall be obligated to receive authorization from the CRF prior to making notifications hereunder to the New York State Attorney General’s Office or any regulating or reporting agencies of a Security Incident, or making any determination to delay notifications due to law enforcement investigations, except as required to comply with the Contractor’s legal obligations. The Contractor agrees that the CRF will have final approval over the form, content, mode of transmission, and timing of any notice to be provided concerning a Security Incident. Approval of notices and/or public disclosures required by law or other regulations will not be unreasonably withheld or delayed. This prior approval applies to any determination to delay notifications due to law enforcement investigations.

Nothing contained herein reduces or alters the Contractor’s obligations under applicable law.

1. “**Security Incident**” means any exploited vulnerability or unauthorized or unlawful access to CRF Data, including any destruction, damage, loss, unauthorized use, unauthorized or unlawful disclosure of CRF Data, any breach or compromise of the Contractor’s computer data, applications, networks, or devices (including the applications, networks, or devices of Contractor’s contractors or service providers that access, store, process, or otherwise interact with CRF Data), including, in the absence of direct evidence of a Security Incident, any occurrence where it can be reasonably assumed under the circumstances that CRF Data was exposed, accessed or disclosed without the CRF’s prior written authorization.
2. **Connection Restrictions.** The Contractor must not connect any non-State computer, electronic storage device, or telecommunications equipment to the OSC network; e.g., personal and corporate laptop computers, personal and corporate USB devices, smartphones, and tablets are included in this prohibition.
3. **Remedies**. The Contractor acknowledges and agrees that the CRF would not have an adequate remedy at law and would be irreparably harmed in the event that the provisions of this Section XXIII (Confidentiality and Security) were not performed by the Contractor in accordance with the specific terms or were otherwise breached. Accordingly, the CRF shall be entitled to injunctive relief to prevent a breach of this Agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy that the CRF may be entitled at law or in equity. It is further understood and agreed that no failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise of any right, power, or privilege hereunder shall preclude any other or further exercise of any right, power, or privilege. If any action is initiated by the CRF to enforce this Section XXIII (Confidentiality and Security), the CRF shall be entitled to reimbursement of all fees, costs and expenses, including reasonable attorney's fees, incurred by it in connection therewith.

1. **BACKGROUND INVESTIGATIONS**
   1. **Contractor/Subcontractor Investigation of Staff**.Background investigations must be conducted by Contractor on its employees, and by Contractor’s affiliates and subcontractors on their employees who will provide any of the Services, or such employees who will have access to OSC’s IT systems, access to CRF confidential information or handle Fund assets, or access to any OSC facility for five (5) consecutive business days or ten (10) days over the annual term of the engagement (“**Covered Employees**”).
2. **Background Investigation Requirements**. At a minimum, background investigations shall include a review/evaluation of the following:

* identity verification, including Social Security Number or national identity number search, as applicable;
* employment eligibility, including verification of U.S. citizenship or legal immigration status, where appropriate;
* watchlists and a National Sex Offender Registry search;
* sanctions and OFAC search (including SEC information sheet);
* criminal history/court records (Federal, state, and local for the past five years), as permitted under applicable law;
* work experience/history for the past five years;
* bankruptcy matters;
* Professional registrations (IAPD, FINRA, NFA), pertinent skills, qualifications, and education/professional credential verification; and
* references.

1. **Background Investigation Certification**. The Contractor, and on behalf of its affiliates and subcontractors, certifies that it has or will conduct a background investigation on Covered Staff prior to the commencement of Services. The Contractor must obtain, unless prohibited by applicable law, the consent of Covered Employees to allow the Office of the State Comptroller Inspector General (“**IG**”) to audit the results of these background investigations, and (i) to review unredacted background investigation records, including supporting documentation, and (ii) to conduct its own background investigation. The CRF reserves the right to prohibit any Covered Employees from accessing CRF confidential information and assets if they do not provide such consent to such access when requested by the IG. The Contractor agrees to undertake a background investigation of any new/replacement Covered Staff during the Term of the Agreement. Only Covered Employees who have satisfactorily passed the background investigation shall be assigned to provide Services.
2. **Records**. The Contractor and its affiliates and subcontractors must maintain background investigation records related to the investigations performed during the Term of the Agreement, in accordance with Appendix A (Standard Clauses for Contracts Entered Into by the Comptroller of the State of New York as Trustee of the New York State Common Retirement Fund) (Section 5, Records).

* 1. **CRF Background Investigation**. A background investigation will be conducted by the CRF on the Contractor, its key principals, its key personnel assigned to provide the Services, its Chief Compliance Officer (or serving in a similar capacity), and persons with substantial ownership interests in the Contractor (“**Covered Persons**” as identified in Appendix F (CRF Vendor Responsibility and Conflict of Interest Disclosure Form)). At the discretion of the CRF, background investigations may also be conducted on affiliates and subcontractors and their principals and key personnel. Such background investigation, at the CRF’s sole discretion, may be conducted prior to the Contractor’s execution of an agreement with such subcontractor. The CRF may conduct subsequent background investigations on the Contractor, Covered Persons, and its subcontractors where the CRF deems there has been a material change in circumstances or where an additional background investigation may be prudent.

Upon receipt of the CRF’s notice of its intent to conduct such background investigation, the Contractor, Covered Persons, and subcontractors must provide to the CRF or its third-party vendor written consent of all individuals subject to the CRF’s background investigation policy. Failure to obtain such consent is grounds for termination for cause of this Agreement.

* 1. **Subcontracts.** The Contractor agrees to incorporate the same obligations imposed herein upon Contractor with regard to the above background investigation obligation into any subcontracts permitted by this Agreement, and expressly accrue those obligations directly to the benefit of the CRF.

1. **INTELLECTUAL PROPERTY**
   1. **Work for Hire**. All work performed by Contractor and its Staff under this Agreement that is prepared solely for the CRF is intended as work for hire (“**CRF Material**”). Such work is specially ordered and commissioned for use as contributions to a collective work, or is other such work as specified by §101(2) of the U.S. Copyright Act (17 U.S.C. 101(2)), and is intended to be a work for hire that is made for the use and ownership of the CRF. Furthermore, the CRF and the Contractor agree that the CRF is the owner of all copyrights regarding such work. Contractor warrants to the CRF that it, and all of its Staff, who have been, or may be used in regard to the Agreement, forfeit all past or future claims of title or ownership to the work produced under the Agreement, except that nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience. Contractor warrants to the CRF that it, and all of its Staff, who have been, or may be used in regard to the Agreement, forfeit all past or future claims of title or ownership to the work produced under the Agreement, except that nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed in the course of Contractor’s business.
   2. **Software/Intellectual Property and Other Licenses**. Contractor warrants and represents it has full ownership or has obtained all necessary rights to use or sublicense to the CRF, all proprietary or third-party software, intellectual property, and related documentation required by the Contractor, if any, to provide the Services.

1. **NOTICES**

Except as otherwise expressly set forth herein, or as otherwise required by applicable law, any legal notices, demands, requests, or other communications in connection with any legal, judicial or quasi-judicial, action, claim, matter or proceeding, given hereunder shall be in writing and shall be delivered personally or sent by certified, registered, or express mail, postage prepaid, but in all cases shall be deemed given when actually received at the following addresses:

**TO THE FUND:**

Attention: Michael Kelly

Title: Director of Operations

Address: Office of the State Comptroller

Division of Pension Investment and Cash Management

110 State Street, 14th Floor

Albany, NY 12236

**TO THE COUNSEL TO THE COMPTROLLER:**

Attention: Nelson Sheingold

Title: Counsel to the Comptroller

Address: Office of the State Comptroller

Division of Legal Services

110 State Street, 14th Floor

Albany, NY 12236

**TO THE CONTRACTOR:**

Attention: **[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**

Title: **[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**

Address: **[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**

**[**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**]**

The Parties shall notify each other, as soon as possible, of any change to the above contact information. Either Party 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 whom all such notices to that Party hereafter are to be addressed.

1. **DISPUTE RESOLUTION**

In the event of a dispute, resolution may first be sought through direct negotiation between the Parties. The Party initiating the process will notify the other Party in writing and set forth the issues for resolution and provide all necessary documentation. During the dispute resolution period all Services will be performed. If the Contractor pursues any legal or equitable remedy outside this resolution process, the Contractor shall, at the direction of the CRF, continue to perform Services in accordance with the terms of this Agreement, until such proceedings may be concluded and will continue to be paid in accordance with the Agreement, less any amounts attributable to the dispute.

1. **LIABILITY AND INDEMNIFICATION; LIMITATION OF LIABILITY**

* 1. **Contractor Liability for Losses**. The Contractor shall be liable to the Comptroller and the CRF, and each of their officers, agents, representatives, and staff, for any and all claims, demands, liabilities, costs, expenses, fees, damages, losses, judgments, settlements, penalties, fines, obligations, suits, proceedings, and/or actions, whether judicial, administrative, investigative, or otherwise of any kind whatsoever (including, without limitation, losses due to the Contractor’s failure to properly address and mitigate against operational risk, and borrower default risk (i.e., counterparty risk), and any other losses, reasonable attorneys’, accountants’, consultants’ or expenses fees and disbursements) (collectively, “**Losses**”) incurred by the Comptroller or the CRF to the extent such arise from or relate to: (i) the negligence, gross negligence, willful misconduct, fraud, bad faith, or violation of applicable law or regulation by the Contractor or any of its Staff; (ii) the breach by the Contractor or any of its Staff of any of the representations, warranties, or obligations set forth in this Agreement or an SLA; (iii) or the Contractor’s, an affiliate’s or subcontractor’s failure to perform their obligations in accordance with the Standards of Conduct or to satisfy its fiduciary duties in connection with this Agreement or an SLA, except, in each case, to the extent that any such Losses are caused by the negligence, gross negligence, willful misconduct, bad faith, or fraud of the Comptroller, the CRF, or any officer, director, or employee thereof.

* 1. **Contractor Liability For Loss or Disappearance of CRF Assets**. To the extent the Contractor holds any CRF assets, the Contractor shall be liable to the Comptroller and the CRF for any loss or disappearance of a CRF asset held by the Contractor hereunder to the extent required by RSSL §178-a (unless such loss or disappearance can be demonstrated by the Contractor to have been due to a force majeure events as set forth in Section XXVIII.I.2 (Liability and Indemnification; Limitation of Liability, Liability Limitations, Force Majeure Events) below, and only to the extent all reasonable and diligent precautions by the Contractor would not have prevented the damage or loss resulting from any such force majeure event) and such loss shall be conclusively presumed to be the result of negligence on the part of the Contractor. The Parties will use reasonable efforts to eliminate or minimize the effect of such force majeure events upon performance of their respective duties under this Agreement. This paragraph does not excuse either Party’s obligation to take reasonable steps to follow disaster recovery procedures.

* 1. **Contractor Indemnification.** The Contractor will indemnify, defend, and hold harmless the Comptroller and the CRF, and each of their officers, agents, representatives, and Staff, without limitation, from and against (i) any Losses that arise from or relate to the negligence, gross negligence, willful misconduct, fraud, bad faith, breach of fiduciary duty, breach of Standards of Conduct, or violation of applicable law or regulation by the Contractor or its Staff and (ii) any and all Losses arising out of or in connection with (i) personal or bodily injury (including death), damage to real or tangible personal property (including electronic systems, software, and databases), or intellectual property caused by any act or omission of the Contractor or its Staff or (ii) any cyber-attack on the systems of the Contractor or its Staff; and (iii) the Contractor’s failure to perform its obligations in strict compliance with the Standards of Conduct except, in each case, to the extent that any such Losses are caused by the negligence, gross negligence, willful misconduct, bad faith, or fraud of the Comptroller, the CRF, or any officer, director, or employee of such.
  2. **Securities Lending Indemnification.** The Contractor, in the event that it (i) fails to perform its duties under Section X (Required Collateral; Reporting) of this Agreement; or (ii) fails to reasonably pursue remedies available to the Contractor, on behalf of the CRF, against an Approved Borrower upon the occurrence of an Event of Default by an Approved Borrower in accordance with Section XI (Events of Default) of this Agreement, subject to the limitation set out in subsection (A) (Contractor Responsibilities) thereof:

shall defend, indemnify, and hold the CRF and the Comptroller harmless from (i) any and all Losses, including but not limited to the replacement value of the Loaned Securities plus accrued interest thereon, (ii) any default by any person or entity (other than the Custodian) in connection with the transaction with the Approved Borrower, and (iii) any and all costs, fees, expenses, and charges (including reasonable attorneys’ fees), incurred by the CRF in enforcing this indemnity; and

shall defend, indemnify, and hold CRF and the Comptroller harmless from costs, fees, expenses, awards, settlements, and reasonable attorneys’ fees incurred by the Comptroller to any entity participating in the Contractor’s securities lending program, to any entity which uses the Contractor as its agent with respect to the allocation of Collateral or its marking to market policies and procedures, or to any Approved Borrower in connection with the foregoing.

* 1. **CRF Claim.** The CRF is hereby deemed to have a claim against the Contractor pursuant to this Section on the date of any event set forth in subsections (D)(1) and (D)(2) above. Nothing herein shall limit the CRF’s right to pursue any other remedy under applicable law.
  2. **Indemnification is in Addition to Rights.** The indemnification obligation contained herein: (i) is in addition to, and not in lieu of, any other right, power, or remedy that the Comptroller and the CRF, or the officers, agents, representatives, and staff of the Comptroller or the CRF may have against the Contractor; and (ii) will not be construed to limit in any way the duties, responsibilities, and obligations of the Contractor set forth in this Agreement.
  3. **Contractor Assistance.** If any claim is made, or any action brought, against the Comptroller or the CRF relating to the activities of the Contractor or its Staff, or the Services, the Contractor shall diligently render to the Comptroller and the CRF (without additional compensation) any and all assistance that may be reasonably requested by the CRF with respect thereto.
  4. **Third-Party Claims.** For third-party claims, the CRF will give the Contractor:

1. prompt written notice of any action, claim, suit, proceeding, or threat of such action relating to this Agreement;
2. the authority to assume, settle, or defend any such action, claim, suit, or proceeding at the Contractor’s sole expense, provided, however, that CRF may retain its own counsel to monitor same and, moreover, may assume and defend its own legal interests to the extent that such are not aligned with the Contractor’s legal interests or if the CRF determines that there is an issue involving a significant public interest; and
3. assistance in the defense of any such action at the expense of the Contractor. any act or omission of the Contractor or its Staff, including bodily or personal injury (including wrongful death); damage to real or tangible personal property (including electronic systems, software and databases); damage to intellectual property; and infringement or violation of a third party’s patent, copyright, license, or other proprietary or intellectual property right; provided however that the Contractor shall not be obligated to indemnify for that portion of any claim, loss, or damage arising hereunder due to the negligent act or failure to act of the Fund.

* 1. **Liability Limitations.**

1. **No Consequential, Indirect, or Special Damages**. Notwithstanding the above, neither the CRF nor the Contractor will be liable for any consequential, indirect, or special damages of any kind which may result directly or indirectly from performance hereunder, including, without limitation, damages resulting from loss of use or loss of profit by the CRF, the Contractor, or by others.
2. **Force Majeure** **Events**. None of the Contractor, the Comptroller, nor the CRF will be liable for any delay or failure in performance beyond its control resulting from acts of war, hostility or sabotage; act of nature, or other force majeure, provided that, with respect to the Contractor, any cyber-attacks will not be deemed to be included in any of the aforementioned categories.
3. **No Personal Liability**. None of the Comptroller, the CRF, or any officer, agent, representative, or staff of the Comptroller or the CRF will have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into pursuant to the terms hereof.
4. **Contractor Liability Limitation**. Subject to the Contractor’s obligations under Sections XII (Acting on Instructions) and XIII (Standards of Conduct) of this Agreement, the Contractor shall have no obligation under this Agreement for Losses that are sustained or incurred solely (i) by reason of any action or inaction by a clearing system or any depository or third-party institution, (ii) as a result of reliance by Contractor upon information provided by a reputable pricing information service, (iii) by any failure or delay by Custodian for whatever reason, to perform Custodian’s obligations to the CRF as Custodian may have under any Loan, (iv) resulting from the proper investment of cash Collateral pursuant to Schedule A, except as provided for in Section XI (Events of Default), or (v) except as required by applicable law, as a result of the acts or omissions of any broker, dealer or agent selected by it to execute cash Collateral investments.
5. **Contractor Reliance**. Subject to the Contractor’s obligations under Sections XII (Acting on Instructions) and XIII (Standards of Conduct) of this Agreement, the Contractor shall be entitled to rely upon: (i) any and all information provided by Comptroller, the CRF or the Custodian with regard to the CRF’s Available Securities positions (including timely buy and sell or corporate actions notifications), management style, turnover, tax rates, cash Collateral guidelines, acceptable non-cash Collateral, and any other similar information relating to the management or custody of the Available Securities; and (ii) the most recently available audited and unaudited financial statements and representations and warranties made by Approved Borrowers.
6. **Fund Right of Set-off**. In the event that any claim is made, or any action is brought, against the Comptroller or the CRF (or by the Comptroller or the CRF against the Contractor or any of its Staff arising out of any acts or omissions of the Contractor or any of its Staff for which Comptroller or the CRF would be entitled to indemnification, then, the Comptroller or the CRF shall have the right to withhold further payments hereunder in sufficient sums for the purpose of set off (i.e., in order to cover said claim or action) or to seek reimbursement from the Contractor to the extent that said claim or action is determined by the CRF to arise from or relate to Contractor’s willful misconduct, fraud, bad faith, violation of applicable laws or regulations, gross negligence, or negligence; provided that such claim shall be a credible and realistic claim that the Comptroller or the CRF reasonably believe were caused by Contractor’s negligence, willful misconduct, bad faith, or fraud, the rights and remedies of the Comptroller or the CRF provided for in this clause are not exclusive and are in addition to, rather than in lieu of, any other rights and remedies provided by law or this Agreement.

1. **CONTRACTOR’S WAIVER AND RELEASE OF LIENS, ENCUMBRANCES, CLAIMS AND RIGHTS**

Except as set forth in Section XI(E) (Events of Default, Reduction of Amounts Payable) of this Agreement, the Contractor hereby waives and releases all liens, encumbrances, claims, and rights of set-off it may have against CRF property, including any credit balance carried in any CRF account and agrees that it will not assert any such lien, encumbrance, claim, or right against any such account or property.

1. **CLAIMS**

Subject to applicable law and to the greatest extent practicable, the Contractor shall promptly notify the CRF in writing of any legal action or proceeding in connection with or relating to this Agreement after receipt of notification of such action or proceeding being initiated against it. The Contractor shall obtain the written approval of the CRF prior to initiating on behalf of the Comptroller or CRF any legal action or proceeding in connection with or relating to this Agreement. Any request to initiate such action or proceeding shall be in writing and sent to the Counsel to the Comptroller.

1. **TERMINATION AND SUSPENSION** 
   1. **Fund Termination**. The CRF reserves the right to terminate or suspend this Agreement, or terminate or suspend the Services or a portion thereof, with or without cause, upon 30 days’ prior written notice.
   2. **Immediate Termination or Suspension**. The CRF reserves the right to terminate or suspend this Agreement or to terminate or suspend the Services or a portion thereof immediately upon written notice to the Contractor if the CRF deems the Contractor’s performance unsatisfactory at any time during the Term of this Agreement, in its sole discretion, including a breach by the Contractor of any provisions of this Agreement, and in the event or the occurrence of an event of insolvency affecting the Contractor. An event of insolvency occurs when (i) a voluntary or involuntary case, petition, or proceeding has been commenced under the United States Bankruptcy Code or any other statute or regulation under the laws of any country relating to bankruptcy or relief of debtors seeking liquidation, reorganization or other relief with respect to the Contractor, or its debts; or (ii) the Contractor: (a) has appointed, or applied, for it or for any substantial part of its property, a court-appointed receiver, liquidator, assignee, trustee, custodian, sequestrator, or other similar official; (b) makes an assignment for the benefit of its creditors; (c) defaults on any secured obligation; (d) fails generally to pay its debts as they become due; (e) takes corporate action in furtherance of any of the foregoing; or (f) experiences a material adverse change in its financial circumstances (collectively, “**events of insolvency.**”

* 1. **Event of Default.** The occurrence of an actual or perceived conflict of interest involving Consultant shall constitute an “**event of default**,” and upon such occurrence, the CRF may, in its sole discretion and for cause, immediately terminate this Agreement and every other contract the CRF has with the Consultant, if any. The occurrence of an event of default hereunder shall be deemed to be a default on every other contract Consultant and its affiliates have with the CRF, and the CRF may immediately terminate those contracts for cause.
  2. **Effect of Termination**. If the Agreement is terminated or suspended for any reason prior to its stated Term, including other such contracts terminated pursuant to XXXI.C. (Event of Default) the Contractor shall be entitled to compensation for Services performed prior to such termination or suspension date which are acceptable to the CRF, in the CRF’s sole discretion. However, no termination of this Agreement by the CRF shall be deemed a waiver of the CRF’s right to make a claim against the Contractor for damages to the CRF resulting from any default by the Contractor of its obligations under the Agreement that occurred prior to the termination date. The Contractor shall not be entitled to final payment under this Agreement until it has satisfied all of its obligations hereunder.

1. **TRANSITION**

At the conclusion of the Term of this Agreement, or in the event of termination of the Agreement for any reason, the Contractor shall continue to perform the Services under these same terms and conditions in order to complete any transactions pending on the effective termination date and to facilitate an orderly transition of the Services to a successor securities lending agent, including but not limited to (i) terminating outstanding Loans under any SLA in accordance with the terms of such SLA and causing such Loans to be returned to the CRF, (ii) cooperating with auditors of the CRF to ensure an accurate final accounting of all activity occurring with respect to CRF securities lending Services; (iii) transferring all necessary records, data, information, and other files related to the Services to the CRF, whether or not supplied to the Contractor by the CRF, or developed or created by the Contractor in connection with the provision of Services; (iv) making appropriate members of its Staff available to answer questions that the CRF and its staff, agents, and designees may have with respect to the records and information being returned; and (v) otherwise assist with such transition, and cooperate to the fullest extent with the CRF and any successor securities lending contractor in order to accomplish a smooth and orderly transition, so that the Services are uninterrupted and are not adversely impacted.

1. **MISCELLANEOUS PROVISIONS**
   1. **Business Continuation and Disaster Recovery.** The Contractor will maintain and update from time to time business continuation and disaster recovery procedures with respect to its securities lending business that reflect the best practices for the industry. The Contractor will provide the CRF with a summary of its business continuation and discovery recovery procedures upon request.
   2. **Additional Documents; Further Acts.** The Contractor and CRF 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. Any written agreement entered into pursuant to this Section shall be subject to the provisions of this Agreement.
   3. **Entire Agreement; Amendments, Modifications.** This Agreement, including all Schedules, Appendices, and Exhibits attached hereto, each of which is incorporated by reference herein, constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes any and all previous agreements, understandings and communications, oral or written, with respect to the subject matter hereof. The Agreement will not be changed, modified, or altered in any manner except by an instrument in writing executed by the Parties.
   4. **Waiver.** No consent to, or waiver, discharge, or release of, any term or provision or breach of this Agreement shall be valid or effective unless such consent, waiver, discharge, or release is in writing, expressly refers to this Agreement, and is signed by the Party to be bound thereby, and no such consent, waiver, discharge, or release shall constitute a consent, waiver, discharge, or release of any other term or provision hereof or any subsequent breach hereof, whether or not similar in nature, or a subsequent consent, waiver, discharge, or release of the same term, provision, or breach hereof or further exercise of any such right, power, or remedy.
   5. **Severability.** If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
   6. **Survival.** All representations, warranties, and covenants contained herein or made pursuant hereto including, but not limited to, the provisions of Appendix A; Section XVI (Representations, Warranties, and Covenants of the Contractor), Section XVII Representations, Warranties and Covenants of the CRF); Section XXIII (Confidentiality and Security); and Section XXVIII (Liability and Indemnification; Limitation of Liability); will survive the expiration or termination of this Agreement.
   7. **Public Communication.** Neither the Contractor nor any of its Staff will at any time, either during the term of or after completion or termination of this Agreement, make any statement to the press or issue any material for publication through any media of communication bearing on the Services or data collected under this Agreement, without prior written approval of the CRF, unless otherwise required by law, in which instance, notice must be provided to the CRF in advance of any such communication provided by Contractor unless such notice is prohibited as a matter of law. Neither the Contractor nor any of its Staff shall use the name or seal of the Comptroller, the CRF, the State, its officials, or employees in any advertising, publicity, or promotion; as an express or implied endorsement of any products or services; or in any other manner.
   8. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which when executed shall constitute an original, and all of which, when taken together shall constitute one instrument. This Agreement may be executed by electronic signature process in accordance with State law.
   9. **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.
   10. **Governing Law.** In addition to the governing law provisions set forth in Appendix A, 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 New York law.
   11. **No Third-Party Benefits.** Nothing herein shall be construed as creating any third-party rights, benefits, or privileges, or standing to maintain any action or proceeding against the CRF in any court or other forum.
   12. **Security Holding Disclosure.** With respect to Securities and Exchange Commission Rule 14b-2 under the U.S. Shareholder Communications Act, regarding disclosure of beneficial owners to issuers of securities, the Contractor is instructed not to disclose the name, address, or security positions of the CRF in response to shareholder communications requests regarding CRF securities lending services, without the express, prior written authorization of the CRF.
   13. **USA PATRIOT Act and Financial Disclosure.** The USA PATRIOT Act requires the Contractor to implement reasonable procedures to verify the identity of any person that opens a new account with it. Accordingly, the CRF acknowledges that §326 of the USA PATRIOT Act and the Contractor’s identity verification procedures require the Contractor to obtain information which may be used to confirm the CRF’s identity including, without limitation, the CRF’s name, address, and organizational documents (“**identifying information**”). The CRF may also be asked to provide information about its financial status such as its current audited financial statements which can be found at <https://www.osc.ny.gov/common-retirement-fund>. The CRF agrees to provide the Contractor with and consents to the Contractor obtaining from third parties any such identifying and financial information reasonably required as a condition of opening an account with or using any service provided by the Contractor.

1. **MERGER OF DOCUMENTS AND ORDER OF PRECEDENCE**

This Agreement will be deemed inclusive of the following documents. Only documents expressly listed below will be deemed a part of this Agreement. Conflicts between these documents will be resolved in the following order of precedence:

1. Appendix A – Standard Clauses for Contracts Entered Into by the Comptroller of the State of New York as Trustee of the New York State Common Retirement Fund;
2. The Agreement (this document), including:

* Appendix B – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment,
* Appendix C – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures,
* Appendix D – Insurance Regulations, Official Compilation of Codes, Rules and Regulations of the State of New York, Chapter IV. Financial Condition of Insurer and Reports to Superintendent, Subchapter F. Public Retirement Systems, Part 136. Public Retirement Systems,
* Appendix I – Policy Regarding the Independence of Consultants Providing Investment Advisory Services
* Schedule A – Fund’s Cash Collateral Investment Guidelines,
* Schedule B – Eligible Collateral as of the Effective Date of this Agreement,
* Schedule C – Term Loans,
* Schedule D – Master Securities Lending Agreement **[**to be negotiated with the Selected Proposer**]**,
* Schedule E – Approved Borrower List,
* Schedule F – Approved Repo Counterparty List,
* Schedule G – Sample Form of Daily Report, and
* Schedule H – Restricted List,

1. Exhibit A – the RFP 24-04, including:

* the Official Responses to Questions, and
* any and all amendments and clarifications to the RFP;

1. Exhibit B – Contractor’s Proposal and Completed Attachments, consisting of:

* Exhibit B1 – Technical Proposal,
* Exhibit B2 – Contractor’s Cost Proposal,
* Exhibit B3 – Administrative Proposal), as modified by any clarifications thereto, and
* Contractor’s completed Attachments, but excluding standard materials (e.g., draft contract) submitted by Contractor with its Proposal, including:
  + Appendix E – Contractor’s Certifications/Acknowledgements,
  + Appendix F – CRF Vendor Responsibility and Conflict of Interest Disclosure Form,
  + Appendix G – Proposer’s Disclosure of Prior Non-Responsibility Determinations, and
  + Appendix H – Material Conflicts of Interest Statement.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

This Agreement may be executed in counterparts, each of which constitute an original and all of which, when taken together, constitute one instrument. The use of electronic signatures made in accordance with applicable law shall be of the same legal effect, validity, and enforceability as a manually-executed signature.

|  |  |
| --- | --- |
| **Contract Number: [ICM XXX]** | |
| **Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Comptroller of the State of New York**  **as Trustee of the Common Retirement Fund** |
|  |  |
| **Signature** | **Signature** |
|  | **Anastasia Titarchuk** |
| **Printed Name** | **Printed Name** |
|  | **CIO and Deputy Comptroller of Pension Investment and Cash Management** |
| **Title** | **Title** |
|  |  |
| **Date** | **Date** |

**APPENDIX A**

**STANDARD CLAUSES FOR CONTRACTS ENTERED INTO BY THE COMPTROLLER OF THE STATE OF NEW YORK AS TRUSTEE OF THE**

**NEW YORK STATE COMMON RETIREMENT FUND**

The parties to the attached contract, license, lease, amendment, or other agreement of any kind (the “**Contract**”) agree to be bound by the following clauses, which are hereby made a part of the Contract. As used in this Appendix A, the term “**Contracting Party**” refers to any party to the Contract other than the Comptroller of the State of New York (the “**Comptroller**”) as Trustee of the New York State Common Retirement Fund (the “**Fund**”), or the Fund itself.

**1. NON-ASSIGNMENT CLAUSE.** Neither the Contract nor any of the Contracting Party’s right, title, or interest herein may be assigned, transferred, subcontracted, conveyed, sublet, or otherwise disposed of without the prior written consent of the Fund, and any attempts to assign the Contract without the Fund’s written consent shall be null and void.

**2. NON-DISCRIMINATION REQUIREMENTS.** The Contracting Party will comply with all applicable State and Federal statutory and constitutional anti-discrimination provisions relating to employment.

**3. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the New York State Labor Law, or a building service contract covered by Article 9 thereof, neither the Contracting Party’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Department of Labor. Furthermore, the Contracting Party and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rate for overtime pay, as determined by the State Department of Labor in accordance with the Labor Law.

**4. INTERNATIONAL BOYCOTT PROVISIONS.** The Contracting Party agrees, if the Contract exceeds $5,000, as a material condition of the Contract, that neither the Contracting Party nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401, et seq.) or any successor act thereto, as amended from time to time, or regulations promulgated thereunder. If such Contracting Party, or any of the aforesaid affiliates of the Contracting Party, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract’s execution, the Contract shall be rendered forfeit and void. The Contracting Party shall so notify the Comptroller within five (5) business days of such conviction, determination or disposition of appeal.

**5. RECORDS.** The Contracting Party shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under the Contract (collectively, the “Records”). The Records must be kept for the balance of the calendar year in which they are created and for six (6) additional calendar years thereafter. The Fund, or, at the sole discretion of the Comptroller, the Attorney General or any other person or entity authorized by the Comptroller to conduct an examination, shall have access to the Records during normal business hours at an office of the Contracting Party within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. The Fund shall take reasonable steps to protect from public disclosure any of the Records that are exempt from disclosure under Section 87 of the Public Officers Law (the “Statute”), provided that: (i) the Contracting Party timely informs an appropriate official, in writing, that the Records should not be disclosed; (ii) the Records are sufficiently identified; and (iii) designation of the Records as exempt under the Statute is appropriate as determined by the Comptroller. The Contracting Party hereby consents to: (i) submit to a review by the Superintendent of the New York State Department of Financial Services of fees paid by the Fund to the Contracting Party and services rendered by the Contracting Party to the Fund; and (ii) respond in writing to any inquiry or request for information by the Superintendent of the New York State Department of Financial Services concerning fees paid by the Fund to the Contracting Party and services rendered by the Contracting Party to the Fund, in each case, pursuant to the terms of the Contract. Nothing contained herein shall diminish, or in any way adversely affect, the Fund’s right to discovery in any pending or future litigation.

**6. NON-DISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND.** If the Contracting Party has business operations in Northern Ireland, it shall take lawful steps in good faith to conduct those business operations in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland and, upon the request of the Comptroller, shall permit independent monitoring of the Contracting Party’s compliance with such principles.

**7. CONFLICTING TERMS.** In the event of a conflict between the terms of the Contract (including any and all attachments thereof) and the terms of this Appendix A, the terms of Appendix A shall control.

**8. GOVERNING LAW.** Unless otherwise expressly agreed to by the Parties, the Contract shall be administered, construed, and enforced according to the laws of the State of New York (without regard to any conflict of laws provisions) to the extent such laws have not been preempted by applicable federal law. Any action at law, suit in equity, or other judicial proceeding for the enforcement of the Contract or any provisions thereof shall be instituted only in the courts of the State of New York. Any suit for money damages against the Fund must comply with the New York State Court of Claims Act.

**9. NO ARBITRATION.** Disputes involving the Contract, including the breach or alleged breach thereof, shall not be submitted to binding arbitration.

**10. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contracting Party hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contracting Party’s actual receipt of process or upon the Fund’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contracting Party must promptly notify the Fund, in writing, of each and every change of address to which service of process can be made. Service by the Fund to the last known address shall be sufficient. The Contracting Party will have thirty (30) calendar days after service hereunder is completed in which to respond.

**11. CONFLICTS DISCLOSURE.** If this is a Contract for investment management services, investment advisory services, or any related service or product, the Contracting Party represents and covenants that it (i) does not have any conflict of interest not previously disclosed to the Fund in writing that could reasonably be expected to impair its ability to provide unbiased and objective investment advice or decisions, (ii) will promptly disclose in writing to the Fund any such conflict that it may have hereafter, and (iii) will annually file a statement with the Fund that it is in compliance with these requirements, which statement shall include the following language:

“[THE CONTRACTING PARTY] ACKNOWLEDGES THAT IT OWES THE COMPTROLLER AND THE COMMON RETIREMENT FUND A FIDUCIARY DUTY. THIS MEANS THAT, AMONG OTHER THINGS, [THE CONTRACTING PARTY] MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. [THE CONTRACTING PARTY] ACKNOWLEDGES THAT FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITY.”

**12. POLITICAL CONTRIBUTIONS.** If this is a Contract for investment management or investment advisory services, the Contracting Party represents that neither it nor any of its Covered Associates (as defined in the Investment Advisers Act of 1940, as amended (the “Advisers Act”)) has made any political contributions that would be in violation of Rule 206(4)-5 or Rule 204-2 under the Advisers Act with respect to the Contract.

**13. CERTAIN REQUIREMENTS.** The Contracting Party will take no action (or fail to take a required action) (a) in violation of any relevant anti-money laundering legislation, rule, regulation, or order administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, including Subtitle B, Chapter V of Title 31 of the U.S. Code of Federal Regulations, in each case as amended from time to time, or (b) enter into any transaction or activity with (i) any Person appearing on the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control in the United States Department of the Treasury, (ii) any other Person with whom a transaction is prohibited by Executive Order 13224, the USA PATRIOT Act, the Trading with the Enemy Act, or the foreign asset control regulations of the United States Treasury Department, in each case as amended from time to time, (iii) any Person known by the Contracting Party (after reasonable inquiry) to be controlled by any Person described in the foregoing items (i) or (ii), or (iv) any Person having its principal place of business, or the majority of its business operations (measured by revenues), located in any country described in the foregoing item (ii). The Contracting Party also agrees that it will not make any payment to any Person in violation of the U.S. Foreign Corrupt Practices Act (as amended from time to time), or any other applicable anti-money laundering or anti-terrorism statute or regulation. For the purposes of this provision, the term “Person” includes any individual, partnership, firm, corporation, limited-liability company, joint venture, association, trust, unincorporated organization, nation, government, territory, or other political or governmental agency, authority, or unit.

**14. MWBE STRATEGY.** Pursuant to Retirement and Social Security Law Section 423-C, the Comptroller has established a Minority- and Women-Owned Business Enterprise (“MWBE”) asset management and financial institution strategy (“strategy”) which includes tracking and reporting on the identity and participation of MWBE entities that do business with the Fund. In accordance with the strategy, the Contracting Party will cooperate with the Comptroller or his representatives who seek information needed to determine the minority and women composition of the Contracting Party’s owners and managers.

**15. NO INDEMNIFICATION.** The Fund will not indemnify nor hold harmless the Contracting Party from suits, damages, costs, or attorney fees in actions brought by third parties against the Contracting Party.

**16. PRIOR NON-RESPONSIBILITY DETERMINATIONS.** By signing the Contract, the Contracting Party certifies that within the past four years it has not been found to be non-responsible based on [i] impermissible Contacts or other violations of New York State law, or [ii] the intentional provision of false or incomplete information to a governmental entity. If this certification is intentionally false or intentionally incomplete, the Comptroller may exercise his right to terminate the Contract; in that event the Contract shall be deemed terminated and of no further force and effect within five (5) days from the date the Comptroller provides written notification to the Contracting Party of such termination. If the Contracting Party cannot certify as to the above, prior to signing the Contract it must disclose such finding(s) of non-responsibility and explain the circumstances that led to such findings. If such disclosure and/or explanation is/are intentionally false or intentionally incomplete, the Comptroller may exercise his right to terminate the Contract as stated above.

**17. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS**. To the extent applicable to the Contract, the Contracting Party shall comply with the provisions of General Business Law Sections 899-aa and 899-bb (Stop Hacks and Improve Electronic Data Security Act); State Technology Law Section 208, as each such provision may hereafter be amended.

**18. Prohibited Benefits Relating to the Contract**. By signing the Contract, the Contracting Party certifies that neither it, nor any affiliate, any predecessor company or entity, nor any owner, any director, any officer, or any key person of it, nor any of its staff, has received or paid, or entered into an agreement to receive or pay, any compensation, fees, or any other benefit from or to any third party, including any subcontractor, to influence the outcome in connection with the direct or indirect procurement of this Contract.

February 15, 2022

**APPENDIX B**

**OSC POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT,**

**INCLUDING SEXUAL HARASSMENT**

**DISCRIMINATION AND HARASSMENT**

It is the policy of the Office of the State Comptroller (“OSC”) to provide a workplace that is free of discrimination and harassment based on race, color, sex (including sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender), creed or religion, age, national origin, disability, marital status, military or veteran status, predisposing genetic characteristics, domestic violence victim status or any other classification protected by state or federal law, rule or regulation or executive order.

Discrimination is defined as the failure or refusal to hire, promote, or train an individual or treat that individual equally with respect to compensation, terms, conditions or privileges of employment because of that individual’s membership in any one of the above classes. Harassment based upon a person’s membership in any of the above classes is included within the definition of discrimination.

In keeping with its policies, OSC reaffirms that it will not tolerate such discrimination or harassment in its workplace and that it will take appropriate action to prevent and stop the occurrence of such conduct in its workplace. OSC employees and any third parties who interact with OSC employees in the workplace are expected to avoid any behavior or conduct that could be interpreted as discrimination/harassment based on membership in any of the above classes.

Examples of conduct that may constitute harassment based upon membership in one of the above classes include, but are not limited to:

* kidding or teasing related to membership in, or characteristic of one of the above classes, such as laughing at or mimicking someone’s physical or mental impairment, foreign accent, etc.;
* using ethnic or racial slurs;
* conduct that denigrates or shows hostility toward an individual because of protected class status, and that has the purpose or effect of creating an intimidating, hostile or offensive environment; and
* telling jokes that belittle a member or members of one of the above classes.

**SEXUAL HARASSMENT**

Sexual harassment, a form of discrimination, is defined as unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

* such conduct is made either explicitly or implicitly a term or condition of employment;
* submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment; or
* such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

Examples of sexual harassment include, but are not limited to, sexual innuendo; suggestive comments; sexually-oriented kidding, teasing or practical jokes; jokes about gender-specific traits; jokes about sexual orientation, or perceived masculinity or femininity of individuals; foul or obscene language or gestures; display of foul, obscene or sexually suggestive printed or visual material; physical conduct such as touching or patting; sexually-oriented email or phone mail messages; suggestive or obscene letters, notes, or invitations; inappropriate discussions of a person’s physical appearance; or unwelcome gifts and attention.

A perpetrator of harassment can be a superior, subordinate, co-worker or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer or visitor.

Questions about what behavior constitutes discrimination or harassment, including sexual harassment, or requests for OSC Executive Orders and policies on such matters may be directed to the OSC Division of Diversity Management at (518) 473-1368.

August 31, 2021

**APPENDIX C**

**OSC EXECUTIVE ORDER ON** **PROCUREMENT INTEGRITY**

Whereas, it is the policy of the Office of the State Comptroller (OSC) and the New York State Common Retirement Fund (CRF) to procure goods and services in a fair, equitable and open manner and to protect the procurement process from improper influences; and

Whereas, procurement lobbying activities must be monitored and documented to assure the integrity of the procurement process;

Now, therefore, I, Thomas P. DiNapoli, Comptroller of the State of New York, in consideration of the foregoing, do hereby order as follows;

1. Applicability. This executive order applies to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology. Decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, and selections of investment advisors or managers whose services are integral to the administration of CRF investments, remain subject to the Comptroller’s fiduciary responsibility to administer the CRF prudently to increase and preserve CRF assets on behalf of its beneficiaries. In addition, selection of counsel to represent the CRF in transactional, investment or litigation matters remain subject to the Comptroller’s fiduciary responsibilities. Although such CRF investment decisions and selections are not subject to this executive order, they shall be made in a fair and equitable manner, in accordance with the Comptroller’s fiduciary responsibilities.
2. General Counsel. The General Counsel shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF. The General Counsel shall form such committees or draw upon OSC staff as needed to fulfill this responsibility.
3. Procedural Controls. The General Counsel shall develop, in consultation with the executive staff of OSC, procedural controls in the form of written Procurement Integrity Procedures. Such procedures shall:
   1. require that decisions made on the award of procurement contracts shall be made in accordance with Article 11 of the State Finance Law, free from any improper influence;
   2. require that any OSC employee who has direct knowledge of any improper influence or attempted improper influence shall immediately make a record of the improper influence or attempted improper influence relating to a bid, proposal or a procurement contract and notify the General Counsel or appropriate Division of Legal Services staff designated by the General Counsel;
   3. prohibit contact relating to a bid or proposal, during the procurement process, between all OSC personnel involved in the determination of the procurement contract award and any employee, agent, or consultant of a bidder or proposer competing for the contract, except for contacts authorized by the procedures established pursuant to this executive order;
   4. establish procedures for appropriate contacts between OSC personnel involved in the determination of a procurement contract award and the employees, agents or consultants of a bidder or proposer for the purpose of clarifying a bid or proposal. Such authorized contacts shall only be for the purpose of providing information to OSC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by a bidder or proposer, and shall occur only at such times and in such manner as have been authorized by the procedures established pursuant to this executive order;
   5. provide for appropriate contacts between OSC personnel and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of bids or proposals and selection of a contractor have been completed;
   6. establish a process for the review by the General Counsel of any allegations of improper influence or attempted improper influence, and for the imposition of sanctions if such improper activity has been found to exist.
4. Incorporation of Procedural Controls in Contract Documents. The Procurement Integrity Procedures required by this executive order shall be incorporated into all OSC and CRF procurement solicitations and contracts.
5. Periodic Review. The General Counsel shall periodically review the Procurement Integrity Procedures with OSC personnel in order to ascertain potential areas of exposure to improper influence and to adopt desirable revisions for more effective avoidance of improper influences.
6. Sanctions. Any OSC employee who violates the Procurement Integrity Procedures may be subject to disciplinary action. Any vendor who violates the Procurement Integrity Procedures may be found to be a non-responsible vendor, and on the basis of such finding, may be ineligible to receive a contract award.

/s/

Thomas P. DiNapoli

Comptroller, State of New York

Last Revised Date: March 14, 2007

Original Date: February 14, 2002

**OSC PROCUREMENT INTEGRITY PROCEDURES**

In order to ensure that procurements of goods or services[[1]](#footnote-1) by the Office of the State Comptroller (OSC) or the Common Retirement Fund (CRF) are conducted in a fair, equitable and open manner, the procedures set forth below shall apply to the procurement process.

The General Counsel to the Comptroller shall have general responsibility for the prevention of improper influence relative to all procurement contracts awarded by OSC or CRF.

A copy of these Procurement Integrity Procedures will be given to every OSC employee, consultant, or other person assigned to any task related to an OSC or CRF procurement. A copy of these procedures will be incorporated into every Request for Information (RFI), Request for Proposals (RFP) or Invitation for Bids (IFB) issued by OSC or CRF.

Any OSC employee who violates these procedures may be subject to disciplinary action, such as a reprimand, suspension, demotion, or dismissal. Any vendor who violates these procedures may, after notice and an opportunity to be heard, be determined to be a non-responsible vendor, and on the basis of such a determination may be ineligible to receive a contract award.

Every reasonable effort will be made to assure compliance with these procedures, but a minor deviation from these procedures that does not impair the fairness and integrity of the procurement process will not require the invalidation of a contract award.

1. OSC employees must provide every interested vendor[[2]](#footnote-2) with an equal opportunity to compete. No information may be given to one vendor without being made available to all other interested vendors. Vendors should be asked to submit every substantive question[[3]](#footnote-3) concerning the procurement in writing not later than the date specified by OSC for such questions; and a copy of each question, together with OSC’s written answer, should be supplied to all interested vendors and included in the procurement record.
2. Unless otherwise directed by the General Counsel to the Comptroller, OSC’s Assistant Comptroller for Administration or a designee will serve as the coordinator for all procurement-related contacts between OSC personnel and vendor personnel. All telephone calls, correspondence, and meeting requests must be routed to: Assistant Comptroller for Administration, Office of the State Comptroller, 110 State Street – 13th Floor, Albany, NY 12236, telephone: (518) 474-7574, Fax: (518) 473-9377, Email: [RFP@osc.state.ny.us](mailto:RFP@osc.state.ny.us). OSC’s Assistant Comptroller for Administration, or a designee, will maintain a record of all such contacts.
3. A vendor may not exert or attempt to exert any improper influence[[4]](#footnote-4) relating to the vendor’s bid or proposal. Any OSC employee who has direct knowledge of any improper influence or attempt to exert an improper influence concerning a procurement contract shall immediately make a record of the improper influence or attempted improper influence and notify the General Counsel to the Comptroller. The General Counsel to the Comptroller shall thereupon cause an investigation to be made and shall recommend such action, if any, as may be necessary.
4. Unless otherwise directed by the General Counsel to the Comptroller, OSC’s Assistant Comptroller for Administration or a designee will be responsible for approving and scheduling all contacts between OSC employees and vendor personnel concerning procurements.
5. Vendors are expected to obtain information relating to an OSC or CRF procurement only from an OSC employee or other person designated by OSC. Vendors who seek information from other sources are cautioned that they rely on such information at their own risk.
6. Every IFB and RFP shall require vendors to identify in their bids or proposals the persons authorized to represent the vendor by name, address, telephone number, place of principal employment and occupation. This requirement applies not only to vendor employees involved in the submission of the vendor’s bid or proposal but also to every individual or organization employed or designated by the vendor to attempt to influence the procurement process[[5]](#footnote-5). If, after submission of a bid or proposal, a vendor retains an individual or organization to attempt to influence the procurement process, then the name, address, telephone number, place of principal employment and occupation of such individual or organization shall be disclosed in writing to OSC or CRF prior to any contact with OSC or CRF and such disclosure shall be included in the procurement record. IFBs and RFPs shall require that vendors indicate in their bids or proposals or subsequent disclosures whether each contact individual or organization has a financial interest in the procurement.
7. All contacts between OSC personnel and vendor personnel during which a procurement-related matter is discussed in any way must be by telephone, in writing, or in person at the place of business of OSC or the vendor or at a place designated by OSC. Written documentation of all such discussions must be filed by the Assistant Comptroller for Administration or designee in the procurement record.
8. During the procurement process no lunch, dinner, or other meal shall be accepted by a member of the OSC staff from an interested vendor, except that a presentation, interview or similar session occurring at the place of business of OSC or a vendor or at a place designated by OSC may include a refreshment break.
9. The evaluations of competing bids or proposals and the recommendations and deliberations of OSC evaluation or selection committees shall be based solely on the merits of the bids or proposals, free from any improper influence.
10. Prior to the public release by OSC or CRF of an Invitation for Bids (IFB) or Request for Proposals (RFP), no OSC employee may disclose the contents of any portion of an IFB or RFP to any person not employed by OSC or any other person not authorized by the Assistant Comptroller for Administration or designee unless such disclosure is specifically authorized by the Assistant Comptroller for Administration, who shall only authorize such disclosure if he or she determines that such disclosure will not impair the fairness and integrity of the procurement process.
11. The evaluation of competing bids or proposals shall be conducted strictly in accordance with the detailed evaluation and selection procedures documented in the procurement record prior to the initial receipt and opening of the bids or proposals. The Assistant Comptroller for Administration or a designee shall issue the detailed evaluation and selection procedures to the members of the evaluation and selection committees prior to the distribution of the bids or proposals to the committee members for evaluation.
12. During the evaluation and selection phases of the procurement process, no OSC employee may disclose any part of a bid or proposal to any other person, except that (i) a member of an evaluation or selection committee may discuss a proposal with another member of the same committee, and (ii) a member of an evaluation or selection committee may disclose a proposal or a portion of a proposal to a person assigned to assist in the evaluation or selection process, as described below.
13. With the approval of the Assistant Comptroller for Administration or designee, evaluation or selection committees may appoint OSC employees or other experts to provide supporting services or information to assist in the evaluation of proposals and the selection of a contractor.
14. At the discretion of the Assistant Comptroller for Administration or a designee, any person to whom a bid or a proposal or a portion of a bid or a proposal is disclosed may be required to comply with a written non-disclosure or confidentiality agreement setting forth the terms and conditions under which such person is entrusted with the bid or proposal or portion thereof.

October 11, 2011

**APPENDIX D**

**INSURANCE REGULATIONS**

**OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK**

**TITLE 11. INSURANCE**

**CHAPTER IV. FINANCIAL CONDITION OF INSURER AND REPORTS TO SUPERINTENDENT**

**SUBCHAPTER F. PUBLIC RETIREMENT SYSTEMS**

**PART 136. PUBLIC RETIREMENT SYSTEMS**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**§136-2.1 Purpose**

(a) [Section 314(b) of the Insurance Law](https://advance.lexis.com/document/?pdmfid=1000516&crid=e012edfb-98cf-411f-ba1d-6955ef4fefc3&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5WYW-NFT1-JSJC-X1P9-00009-00&pdtocnodeidentifier=AALAAFAAGAACAADAAC&ecomp=26vck&prid=49bf0cf7-61bf-4aa5-85cf-5ccbc62469c2) authorizes the Superintendent of Financial Services to promulgate certain standards with respect to the public retirement and pension systems of the State of New York or of a municipality thereof. Specifically, subsection (b) states as follows:

“(b) Notwithstanding any other provision of law to the contrary, the superintendent shall have, in addition to any other powers conferred upon him by law, the following authority with respect to any system: \*\*\*

(2) to promulgate and amend from time to time, after consultation with the administrative heads of systems and after a public hearing, standards with respect to actuarial assumptions, accounting practices, administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness...”

(b) This Subpart establishes standards for the management of the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System (hereinafter, collectively, “the Retirement System”), and the New York State Common Retirement Fund (hereinafter “the Fund”). These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund) are consistent with the following principles:

(1) the retirement system and the fund shall operate under a strong governance framework with a rigorous system of internal controls;

(2) the retirement system and the fund shall maintain a high level of operational transparency;

(3) the Comptroller shall adhere to and manage the retirement system and the fund with the highest ethical, professional and conflict of interest standards;

(4) the Comptroller shall have a fiduciary responsibility to act for the sole benefit of the retirement system’s members and beneficiaries; and

(5) the retirement system and the fund shall be managed in the most efficient and effective manner possible.

**§136-2.2 Definitions**

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) Retirement system shall mean the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.

(c) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the fund.

(d) OSC shall mean the Office of the State Comptroller.

(e) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the fund to provide technical or professional services to the fund relating to investments by the fund, including outside investment counsel and litigation counsel, custodians, administrators, broker dealers, and persons or entities that identify investment objectives and risks; assist in the selection of investment managers, securities, or other investments; or monitor investment performance.

(f) Investment manager shall have the meaning set forth in [Retirement and Social Security Law section 424-a(2)(a)](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=4be74a4d-6d6a-46c4-971d-3d15ddcf6f98&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S51H-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAD&ecomp=4sfyk&prid=e012edfb-98cf-411f-ba1d-6955ef4fefc3).

(g) Placement agent or intermediary shall have the meaning set forth in [Retirement and Social Security Law section 424-a(2)(b)](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=4be74a4d-6d6a-46c4-971d-3d15ddcf6f98&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S51H-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAD&ecomp=4sfyk&prid=e012edfb-98cf-411f-ba1d-6955ef4fefc3).

(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.

(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.

(j) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the fund. For the purpose of this paragraph, the term “substantial financial interest” shall mean the control of the entity, whereby control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

**§136-2.3 Fiduciary Responsibilities**

(a) The Comptroller is a fiduciary and as such shall act solely in the interests of the members and beneficiaries of the retirement system. At all times the Comptroller shall perform his or her responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) The fund shall at all times be under the control of the Comptroller, who shall adopt an investment policy statement and any amendments to such as needed. Key elements of an investment policy statement shall include, without limitation:

(1) investment purpose;

(2) investment objectives;

(3) roles and responsibilities of the Comptroller, and the Comptroller’s staff and committees, with respect to investments of the assets of the fund;

(4) investment guidelines and limits encompassing all types of investments;

(5) asset allocation targets, including procedures for rebalancing;

(6) standards for measuring investment performance and evaluating investment risk; and

(7) any other guidelines adopted by the Comptroller with respect to specific investment related issues, including, but not limited to, securities lending, proxy voting, brokerage, and securities litigation.

(c) No investment or loan transaction shall be made by the fund unless the same has been approved in writing by the Comptroller. The Comptroller may delegate his or her powers of investment to a committee or agent of the Comptroller in accordance with the fund’s investment policy statement. Such committee or agent shall render timely written reports of its activities to the Comptroller under a schedule to be established by the Comptroller, and shall render special reports whenever requested by the Comptroller. The Comptroller shall furnish any such reports promptly upon the request of the superintendent.

(d) In respect to the delegation of investment powers, the Comptroller shall regularly review:

(1) the present holdings in the investment account;

(2) any material changes in the account during the preceding period;

(3) the reasons for such changes and the results achieved thereby;

(4) the investment activity in the account including the rate of turnover; and

(5) any other factors that the Comptroller considers pertinent to an analysis of financial performance and planning, consistent with his or her obligation as a fiduciary.

(e) The Comptroller shall adopt, as shall be deemed necessary, such mortality, service and other tables recommended by the retirement system’s actuary and certify the rates of deduction from compensation and ascertain contributions by the employers computed to be necessary to pay the benefits authorized under the provisions of law. The Comptroller shall also submit to the superintendent, in writing, the reasons for the decision not to adopt such recommendations presented by the retirement system’s actuary.

(f) The Comptroller shall not reverse, reject, or unduly delay the adoption of the recommendations of the retirement system’s medical board in the performance of its statutory duty, unless such rejection, reversal or delay is supported by objective reasons stated, in writing, by the Comptroller.

(g) The Comptroller shall ascertain when contributions to the retirement system are due and institute appropriate procedures to enforce prompt payment thereof. Contributions for a fiscal year that are more than three months overdue shall be reported to the superintendent by a schedule appended to the annual statement filed with the Department of Financial Services.

(h) Neither the Comptroller, nor any consultant or advisor, investment manager, agent or employee, shall:

(1) deal in the assets of the retirement system or the fund for his or her own account;

(2) act in any capacity in any transaction involving the retirement system or the fund on behalf of a party whose interests are adverse to the retirement system or the fund;

(3) receive any consideration from any party other than OSC, the retirement system or the fund in connection with a transaction involving the retirement system or the fund; or

(4) own or maintain any indicia of ownership or personal interest in any assets of the retirement system or the fund other than an interest in the retirement system as a member or beneficiary.

(i) The Comptroller shall require proper minutes of meetings of any committee established by law, regulation or the Comptroller. The Comptroller shall furnish such minutes promptly upon the request of the superintendent.

(j) The Comptroller shall be responsible for ensuring that all members of any committees established by law or regulation or by the Comptroller to assist in the management of the retirement system or in the investment of the assets of the fund have been, (1) provided with appropriate information pertaining to their duties and their fiduciary and ethical responsibilities and (2) provided training with respect to discharge of their fiduciary duties and responsibilities to the fund.

**§136-2.4 Governance Responsibilities and Ethics Provisions**

(a) Committees.

(1) The Comptroller shall appoint committees required by statute, regulation, or executive order of the Comptroller, including but not limited to, the Investment Advisory Committee and the Real Estate Advisory Committee (also known as the Mortgage Advisory Committee) required by [Section 423 of the Retirement and Social Security L](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=2cbf7444-d9d5-4b4a-a730-d63f971137cc&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S51D-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAF&ecomp=4sfyk&prid=a8f60f8e-d004-4489-ba24-cef599b3f7ba)aw. The Comptroller shall establish and administer written ethical standards applicable to the members of such committees. The ethical standards shall establish a financial disclosure and conflicts of interest process designed to ensure that decisions are made for the benefit of the retirement system members and beneficiaries. Such ethical standards shall be published on the OSC public website.

(2) The Comptroller shall authorize the investment advisory committee to review the investment policy statement and offer advice regarding amendments to the investment policy statement as needed.

(3) The Comptroller shall develop a process to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by a committee member. The process shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.

(b) Employees.

(1) All employees of OSC who have responsibility for matters related to the fund are subject to the applicable provisions of the Public Officers Law.

(2) All employees of OSC who have responsibility for matters related to the fund shall be provided training with respect to discharge of their duties and responsibilities to the fund.

(3) The Comptroller shall develop a process to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in OSC by a State officer or employee relating to his or her office or employment. The process shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.

(c) Investment managers, and consultants or advisors.

(1) The Comptroller shall require that investment managers, and consultants or advisors:

(i) promptly disclose to the fund in writing any conflict of interest the investment manager or consultant or advisor may have which could reasonably be expected to impair the investment manager’s, or consultant or advisor’s ability to render unbiased and objective advice; and

(ii) file annually with the fund a statement acknowledging that they are aware of and that they are in compliance with the above standard. Such statement shall contain the following language:

“ALL INVESTMENT MANAGERS, AND CONSULTANTS OR ADVISORS OWE THE COMPTROLLER A FIDUCIARY DUTY. THIS MEANS THAT INVESTMENT MANAGERS, OR CONSULTANTS OR ADVISORS MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITIES”.

(2) The Comptroller shall establish transparent procurement guidelines and procedures with respect to procurement of all investment managers, and consultants or advisors. Such guidelines and procedures shall be published on the OSC public website. The method of selection of investment managers, and consultants or advisors shall be documented in writing, in a procurement record.

(3) The Comptroller shall develop a process to receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by a person or entity having business dealings with the fund relating to such dealings. The process shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.

(d) Placement agents or intermediaries. In order to preserve the independence and integrity of the fund, to prevent potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the fund, the fund shall not engage, hire, invest with, or commit to an investment manager that is using the services of a placement agent or intermediary to assist such investment manager in obtaining investments by the fund, nor shall the fund engage, hire, invest with, or commit to an investment manager without obtaining from such investment manager a certification in the form and manner prescribed by the fund stating that such investment manager has not used the services of a placement agent or other intermediary to assist such investment manager in obtaining investments by the fund.

(e) Audit committee. Consistent with his or her obligations as a fiduciary, the Comptroller shall establish an audit committee for the retirement system and the fund comprised exclusively of unaffiliated persons, one of whom shall reflect the interests of public employees and one of whom shall reflect the interests of public employers. The Comptroller shall:

(1) develop and audit committee charter for the committee;

(2) establish written standards for the selection of audit committee members;

(3) authorize the audit committee to review and report to the Comptroller on the internal audit plans and the internal audit and regulatory examination reports related to the retirement system and the fund;

(4) authorize the audit committee to review and report to the Comptroller on the procurement of external auditor services by the retirement system and the fund;

(5) authorize the audit committee to review and report to the Comptroller on the annual audit process related to the retirement system and the fund and the Comprehensive Annual Financial Report, which shall include meeting with external auditors to review the adequacy of internal controls and significant findings and recommendations; and

(6) authorize the audit committee to develop quarterly progress reports to the Comptroller that, at a minimum, discuss:

(i) the audits of the retirement system and the fund scheduled to be conducted, along with the scope of the audits;

(ii) the audits of the retirement system and the fund completed; and

(iii) significant audit findings and recommendations related to the retirement system and the fund.

**§136-2.5 Transparency and Financial Reporting**

(a) All records, including work papers for the preparation of the annual statement filed with the superintendent, shall be available to the Department’s examiners and be maintained in accordance with the requirements of 11 NYCRR Part 243 (Regulation No. 152).

(b) The comptroller shall require that all agreements with consultants or advisors, investment managers, or third party administrators include provisions that require the person or entity to:

(1) submit to a review by the superintendent concerning fees paid by the fund and services rendered to the fund; and

(2) respond in writing to any inquiry or request for information by the superintendent concerning fees paid by the fund and services rendered to the fund.

(c) Books of account and records of the retirement system and of the fund shall be maintained by fiscal year for which the retirement system files reports.

(d) The comptroller shall maintain a classification of its accounts, numbered and titled, together with an accurate description of the content of each account by debit and credit. The classification of accounts shall be consistent with the requirements of the accounting and financial reporting standards of the Governmental Accounting Standards Board and of any other reporting requirement judged to be necessary by the superintendent.

(e) The comptroller shall maintain records that set forth the expenses incurred by the retirement system and the fund on their behalf in the course of operations.

(f) The comptroller shall have on his or her staff an internal auditor who shall report to the comptroller and shall submit regular reports of the audits of the retirement system’s and fund’s records, accounting procedures, and investment operations, including recommendations for improvement and correction. The comptroller shall require the internal auditor to conduct audits on an annual basis based on risk assessment criteria of the operations of the retirement system and the fund, including audits of business relationships with the retirement system and the fund. The comptroller shall share all internal and external audit reports related to the retirement system and the fund with the audit committee. The comptroller shall furnish any such reports promptly upon the request of the superintendent.

(g) The comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by [section 307 of the Insurance Law](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=6983f370-a98c-4ab3-ab08-ed4fe8b70dae&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A62Y5-GRH1-JN6B-S528-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAG&ecomp=4sfyk&prid=2cbf7444-d9d5-4b4a-a730-d63f971137cc), including the retirement system’s financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the fund to investment managers, consultants or advisors, and third party administrators;

(4) disclose on the OSC public website the fund’s investment policies and procedures; and

(5) require fiduciary and conflict of interest reviews of the fund every three years by a qualified unaffiliated person.

**§136-2.6 Financial Soundness and Actuarial Principles**

(a) Consistent with his or her obligations as a fiduciary, the Comptroller shall establish an actuarial committee comprised exclusively of unaffiliated persons that have expertise and experience in actuarial science.

(b) The Comptroller shall:

(1) develop an actuarial committee charter for the committee;

(2) establish written standards for the selection of actuarial committee members;

(3) authorize the actuarial committee to make recommendations to the retirement system actuary regarding actuarial assumptions and methodologies; and

(4) authorize the actuarial committee to review and report to the Comptroller on the financial soundness of the retirement system.

**§136-2.7 Implementation**

**(**a) Failure to implement provisions of applicable law or regulation shall be regarded as a breach of fiduciary responsibility.

(b) The Comptroller, any officer or employee of OSC, or any other person or entity having a fiduciary responsibility to the fund, who willfully violates or knowingly participates in a violation of any fiduciary standard promulgated pursuant to [Section 314 of the Insurance Law](https://advance.lexis.com/document/documentslider/?pdmfid=1000516&crid=a6ebbd21-f4dc-4850-811b-ad14e7b74293&pdistocdocslideraccess=true&config=&pddocfullpath=%2Fshared%2Fdocument%2Fadministrative-codes%2Furn%3AcontentItem%3A5WYW-NFM1-JKPJ-G1C9-00009-00&pdcomponentid=237259&pdtocnodeidentifier=AALAAFAAGAACAADAAI&ecomp=4sfyk&prid=0caa6155-821a-41b4-8267-1991dff27575) or other applicable law or regulation, shall be guilty of a breach of fiduciary responsibility.

(c) In the event the superintendent determines that there is reasonable cause to believe that the breach has occurred, the superintendent shall, after providing notice to the Comptroller or his or her designee, and to the subject officer or employee of OSC or such other person or entity having a fiduciary responsibility to the fund, transmit a notice of reasonable cause to: the Temporary President of the Senate and the Speaker of the Assembly, if the notice relates to the Comptroller; or to the Comptroller, if the notice relates to an officer or employee of OSC or to any other person or entity having a fiduciary responsibility to the fund.

(d) In any case where the superintendent determines that there is reasonable cause to believe that a breach by the Comptroller, an officer or employee of OSC, or any other person or entity having a fiduciary responsibility to the fund, has resulted in a depletion of the fund, the superintendent, after providing notice to the Comptroller or the Comptroller’s designee, may transmit a copy of his or her determination to the Attorney General or any other appropriate civil or criminal law enforcement authorities for any appropriate further action.

(e) In any case where the superintendent’s transmittal results in an adjudication that the fund has been depleted by reason of any breach, the adjudication will be published on the OSC public website.

(f) This Subpart shall take effect upon publication in the State Register, and will apply to all contracts related to the management of the Fund entered into or renewed by the Comptroller subsequent to that date.

*Amended 6/09/21*

**APPENDIX E**

**Contractor’s CertificationS/Acknowledgements**

|  |  |  |
| --- | --- | --- |
| **SIGNATURE AUTHORITY** | | |
| The Contractor\* and the person signing on behalf of the Contractor certify that such person is authorized to sign on behalf of the Contractor and has the express authority to contractually bind the Contractor. | | |
| **ACKNOWLEDGEMENT OF RECEIPT OF OSC’S POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT** | | |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Policy on Discrimination and Harassment, Including Sexual Harassment (Appendix B), and each agrees to abide by the terms of Appendix B. | | |
| **CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW § 139(L) REGARDING SEXUAL HARASSMENT POLICY AND ANNUAL TRAINING** | | |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.” | | |
| **NON-COLLUSIVE BIDDING CERTIFICATION** | | |
| “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of [such persons] knowledge and belief:   1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other competitor; 2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder, directly or indirectly, to any other competitor; and 3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.” | | |
| **CONTRACTOR’S ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF OSC EXECUTIVE ORDER ON PROCUREMENT INTEGRITY** | | |
| The Contractor and the person signing on behalf of the Contractor acknowledge receipt of the OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures (Appendix C). By submission of this bid, the Contractor and the person signing on behalf of the Contractor each affirms, under penalty of perjury, that they understand and will comply with the terms of Appendix C | | |
| \* All reference to “bidders” within this Appendix E includes proposers and Contractors. Reference to “bids” includes proposals and other responses to solicitations.  **THE SIGNATURE(S) BELOW INDICATES AGREEMENT WITH EACH OF THE ABOVE CERTIFICATIONS/ ACKNOWLEDGEMENTS** | | |
|  |  |  |
| **Proposer Name** |  | **Joint Proposer Name (if any)** |
|  |  |  |
| **Signature** |  | **Signature** |
|  |  |  |
| **Printed or Typed Name** |  | **Printed or Typed Name** |
|  |  |  |
| **Title** |  | **Title** |
|  |  |  |
| **Date** |  | **Date** |
| *Add additional signature lines below for additional Joint Proposers, as necessary.*  October 24, 2023 | | |

**APPENDIX F**

**CRF VENDOR RESPONSIBILITY AND CONFLICT OF INTEREST DISCLOSURE FORM**

|  |  |  |  |
| --- | --- | --- | --- |
| **Vendor Details** *INTERNAL USE – to be completed by PICM staff* | | | |
| Vendor Name | | Federal Vendor ID/EIN #/NYS ID | |
| Contract # | Amendment # | Total Contract Value $ | Term |
| Vendor Type:  Prime  Subcontractor | | Vendor is an investment manager or advisor:  Yes  No | |
| Vendor is a fiduciary to the CRF:  Yes  No | | Vendor is a consultant:  Yes  No | |
| Vendor will have access to CRF IT systems, confidential information, or routine access to a CRF facility:  Yes  No | | | |
| Contract Description: | | | |
| Did the Vendor complete the Vendor Responsibility and Conflict of Interest Disclosure Form? | | Yes  No  *If “Yes,” attach; if “No,” send to vendor to complete* | |
| Were any issues disclosed by Vendor needing review? | | Yes  No | |
| **Vendor Review Complete** | | | |
| **The CRF has undertaken an affirmative review of the Vendor’s responsibility and, based upon such review, has reasonable assurance that the Vendor is responsible.** | | | |
| Name of CRF Reviewer | | Date Review Completed | |

Process notes:

* + For competitive procurements:
    - Finance will attach a Vend Rep Questionnaire to any RFP for consulting or investment management/advisor services or where a vendor will have access to confidential CRF data or systems. Finance will conduct a Vend Rep review.
    - If the vendor is a fiduciary, PICM Ops will notify the Director of Compliance once an award letter has been signed.
  + For non-competitive procurements:
    - Once the CIO has approved the procurement, PICM Ops will send a Vend Rep Questionnaire to any vendor who will be providing consulting or investment management/advisor services or where the vendor will have access to confidential CRF data or systems.
    - If the vendor is a fiduciary, PICM Ops will notify the Director of Compliance before the contract is sent to the vendor for execution.

If a vendor is a fiduciary, the Director of Compliance will complete a background check on the vendor before the contract is executed.

*Consultant means any independent contractor or entity providing professional advice or services to the Fund, where such services include rendering unbiased and objective advice, providing subject matter expertise, or the exercise of discretion.*

Answer all questions.

*The person completing this form must be knowledgeable about the Vendor’s business and operations. The person signing this form on Vendor’s behalf must certify, under oath, all responses given are true to the best of the person’s knowledge.*

**For each Yes response, Vendor must:**

* Attach a separate sheet and describe the issue/provide the information requested. Identify the relevant date for each issue.
* Identify actions taken or currently being implemented to ensure that the issue will not occur again.
* State whether the staff and/or organizational component involved in the identified issue(s) will be assigned to provide services to the CRF.
* State whether the issue will affect Vendor’s financial or organizational ability to provide services to the CRF.
* Provide copies of relevant documents or any other information that would assist the CRF in its vendor responsibility evaluation.

|  |  |  |
| --- | --- | --- |
| **Vendor Information** | | |
| Vendor Name | | Federal Vendor ID/EIN #/NYS ID |
| Vendor Address | | |
| Vendor Email | | Vendor Phone |
| Vendor Type | Prime Vendor  Subcontractor | |

**I hereby certify that all of the attached responses to the CRF Vendor Responsibility and Conflict of Interest Disclosure Form are complete, true and accurate to the best of my knowledge after diligent inquiry.**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Authorized Signature |  | Date |
|  |  |  |
| Name and Title of Authorized Signatory |  |  |

|  |  |  |
| --- | --- | --- |
| ***Vendor includes any affiliate, any predecessor company or entity, owner, director, officer or key person*** | | |
| **Questions** | | |
| 1. Is Vendor, or does Vendor employ any officers, directors or key persons, affiliated\* with New York State, the New York State and Local Retirement System, or the Common Retirement Fund?   *If yes*, on a separate sheet list all affiliations and identify whether any of the officers, directors, or key persons directly own interest of 10% or more of Vendor’s business. | **YES** | **NO** |
| 1. Have there been any major corporate changes at Vendor in the past year (e.g., legal status, equity ownership, business model, management)? | **YES** | **NO** |
| 1. Is Vendor currently in violation of any federal or state securities law or regulation? | **YES** | **NO** |
| 1. Does Vendor use, or has it used in the past 5 years, any other business name, FEIN, or d/b/a other than that provided to the Fund? | **YES** | **NO** |
| 1. Does Vendor have data breach/cyber liability insurance?   *If yes*, attach a certificate *of* coverage. | **YES** | **NO** |
| 1. Has Vendor been a victim of a material cyber breach within the past 5 years? | **YES** | **NO** |

\* As used herein, affiliated means:

(1) the Comptroller or a family member of the Comptroller;

(2) an officer or employee of New York State Office of the State Comptroller (OSC);

(3) an individual or entity doing business with OSC or the Common Retirement Fund (CRF); or

(4) an individual or entity that has a substantial financial interest in an entity doing business with OSC, the CRF or the New York State Retirement System.

|  |  |  |
| --- | --- | --- |
| **Question** | | |
| 1. DoesVendor have a process for determining compliance with gift and entertainment policies applicable to government contracts? | **YES** | **NO** |
| 1. Has Vendor, its affiliates, officers, directors, key persons or employees offered, made, or provided any gift or hospitality to a New York State employee in violation of the New York State gift restrictions?\*\* | **YES** | **NO** |
| 1. Does Vendor agree to notify the CRF in the event Vendor becomes aware of any violation of the gift restrictions? | **YES** | **NO** |

\*\* New York State Public Officers Law provides that:

(1) No statewide elected official, state officer or employee, individual whose name has been submitted by the governor to the senate for confirmation to become a state officer or employee, member of the legislature or legislative employee shall, directly or indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her, or could reasonably be expected to influence him/her, in the performance of his/her official duties or was intended as a reward for any official action on his/her part; and

(2) No person shall, directly or indirectly, offer or make any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.

|  |  |  |
| --- | --- | --- |
| **Is Vendor or at any time within the past 5 years has Vendor been:** | | |
| 1. the subject of or participated in litigation involving the New York State and Local Retirement System, the CRF or the Comptroller? | **YES** | **NO** |
| 1. the subject of a criminal indictment, judgment, conviction or a grant of immunity, including pending actions? | **YES** | **NO** |
| 1. named in, been the subject of, or agreed to a settlement or judgment in a civil matter that (i) could substantially impact the financial integrity of the firm or its capacity to provide services to the CRF, or (ii) involves any of the same personnel the firm will assign to provide services to the CRF? | **YES** | **NO** |
| 1. the subject of an enforcement action, sanction, fine, citation, or other disciplinary action or proceeding by the SEC, FINRA, NASD, or bar association, stock exchange, regulatory or professional oversight entity where such was not dismissed with prejudice or did not result in a finding of no responsibility? | **YES** | **NO** |
| 1. the subject of a material finding; had fines or penalties assessed; been censured; had an unsatisfied judgment, injunction or lien (including judgments for taxes owed) obtained by; or agreed to a settlement with any federal, state or local governmental or regulatory entity? | **YES** | **NO** |
| 1. the subject of or party to any charge, investigation, action, suit, arbitration, legal claim or proceeding pending, threatened or ongoing, before or by any court or regulatory agency (or represented a party to such) that would have a material adverse effect upon Vendor’s services to the CRF or on Vendor’s firm? | **YES** | **NO** |
| 1. the subject of a civil suit related to the type of services to be provided to the CRF? | **YES** | **NO** |
| 1. required to pay penalties or compensate any of its clients upon termination of services? | **YES** | **NO** |
| 1. the subject of a government suspension, debarment or rejection of any bid or disapproval of any contract, including pending actions, for (i) lack of responsibility, (ii) impermissible contacts or other violations of New York State law, (iii) denial or revocation of prequalification, (iv) a voluntary exclusion agreement, or (v) intentional provision of false or incomplete information to a governmental entity? | **YES** | **NO** |
| 1. the subject of a federal, state or local government contract suspension or termination for cause prior to the completion of the term of a contract or been the subject of an administrative proceeding or civil action seeking specific performance or restitution in connection with any federal, state or local government contract? | **YES** | **NO** |

1. List the regulatory bodies having oversight of Vendor.

|  |  |  |
| --- | --- | --- |
|  | **NA** |  |
|  | | |
|  | | |
|  | | |

|  |  |  |
| --- | --- | --- |
| **Questions** | | |
| 1. Is Vendor an SEC-registered investment advisor?   *If yes,* on a separate sheet describe how Vendor allocates investment opportunities among its clients. | **YES** | **NO** |
| 1. Does Vendor provide consulting services *and* investment management or advice (regardless of whether such services are provided to the CRF)?   *If yes…*   * Fill out the Lines of Business chart below. Add rows as necessary. * Either describe below or attach Vendor’s process to identify potential conflicts of interest. | **YES** | **NO** |

LINES OF BUSINESS:

List all business lines from which Vendor has derived revenue during the past 5 years and the approximate percentage of total revenue represented by each line (e.g., consulting, asset management, broker dealer).

|  |  |
| --- | --- |
| Business Line | Percentage of Total Revenue |
|  |  |
|  |  |
|  |  |
|  |  |

Vendor’s process to identify potential conflicts of interest.

|  |
| --- |
|  |

|  |  |  |
| --- | --- | --- |
| **Conflicts of Interest** | | |
| 1. Has Vendor identified any potential conflicts of interest with the New York State and Local Retirement System, the CRF or the Comptroller?   Potential conflicts may relate to: economic or financial interests; fee or other compensation arrangements with sponsors (or affiliates) of private investment funds, other investment advisors, investment companies, broker dealers, municipal securities dealers and any other person or entity that could, or could be reasonably perceived to, conflict with the Vendor’s ability to provide unbiased and objective advice to the CRF.  For example:   * Vendor currently represents or provides services to a client whose interests have been, are, or may be adverse to the interests of the CRF; * Vendor has interests that conflict with or may be perceived to conflict with Vendor’s ability to provide unbiased and objective advice to the CRF; * Vendor has within the previous 5 years, represented or provided services to a client whose interests were, or may have been, adverse to CRF interests. | **YES** | **NO** |

1. Listand describe Vendor’s business relationships involving New York State including its agencies, the New York State and Local Retirement System, the CRF and the Comptroller during the past 5 years.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **NA** |  | |  |
| New York State Entity | | | Relationship | |
|  | | |  | |
|  | | |  | |
|  | | |  | |
|  | | |  | |

1. Identify persons with substantial ownership interests in the Vendor; persons (employees) who will be assigned to CRF’s account; and the name of the individual designated as the Vendor’s Chief Compliance Officer (or serving in a similar capacity).

|  |  |  |
| --- | --- | --- |
| Name | Email address | Title and Capacity |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Updated August 2020

**APPENDIX G**

**PROPOSER’S DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS**

1. Has the Proposer been found by any governmental entity to be non-responsible within the past four years from the date of this proposal due to either:
   1. impermissible contacts or other violations of New York State Law; or

Yes  No

* 1. intentional provision of false or incomplete information to a governmental entity?

Yes  No

If your answer to either of the above is “Yes,” please attach a written explanation, indicating the date of such finding, the entity that found non-responsibility, and the circumstances surrounding such finding (including any written finding of non-responsibility issued by such entity).

Signature

Printed or Typed Name

Title

Procurement Number/Name

Date

February 29, 2012

**APPENDIX H**

**MATERIAL CONFLICTS OF INTEREST STATEMENT**

As provided in Part 136-2.4(c) of Chapter IV of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York, investment managers, and consultants or advisors shall promptly disclose to the Common Retirement Fund in writing any conflict of interest the investment manager or consultant or advisor may have which could reasonably be expected to impair the investment manager’s, or consultant’s or advisor’s ability to render unbiased and objective advice.

Investment managers, and consultants or advisors hereby acknowledge that they are aware of and in compliance with the above standard, and agree as follows:

**ALL INVESTMENT MANAGERS, AND CONSULTANTS OR ADVISORS OWE THE COMPTROLLER AND THE COMMON RETIREMENT FUND A FIDUCIARY DUTY. THIS MEANS THAT INVESTMENT MANAGERS, OR CONSULTANTS OR ADVISORS MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITIES.**

|  |
| --- |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Signature** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Name** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Title** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| **Date** |

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

) ss.:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On the day of in the year 20 , before me personally appeared , known to me to be the person who executed the foregoing instrument, who, acknowledged to me that they maintain an office at , and further that they are the of , the business described in the foregoing instrument; that they are authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein; and that, pursuant to that authority, they executed the foregoing instrument in the name of and on behalf of the business as the act and deed of the business.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Notary Public**

**Registration No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Revised May 18, 2015

**APPENDIX I**

**POLICY REGARDING INDEPENDENCE OF CONSULTANTS**

**PROVIDING INVESTMENT ADVISORY SERVICES**

**General Policy**

To discharge the fiduciary duty of the Comptroller, as Trustee of the Common Retirement Fund (CRF), to the members, retirees and beneficiaries of the New York State and Local Retirement System, the CRF must be able to use best-in­ class consultants as advisors and to invest assets with best-in-class investment managers.

The CRF has several contracts with consultants who provide investment advice, both with general consultants and with asset class level consultants. The CRF also has contracts and relationships with other consultants and advisors, including contracts with a "pool" of consultants available to provide such consulting services on a project basis. Persons and entities in all of the above relationships are referred to herein as "consultants". Some of these consultants or their affiliates also offer investment management services.

It is not uncommon in the investment industry for a firm that offers investment consulting services to also offer investment management services, often through an affiliate. However, this can present a potential for or the appearance of a conflict where a firm providing investment consulting services to a client approaches the same client seeking to also manage money for that client.

To balance the potentially competing goals of consultant independence and obtaining the best investment consulting services as well as the most attractive investment opportunities, it is the policy of the CRF that consultants providing investment advisory services to the CRF cannot seek to manage assets for the CRF, either directly or through their affiliates, during the term of the consulting services contract, unless specifically requested to do so by the Chief Investment Officer (CIO) of the CRF and subject to certain procedures set out herein to manage potential conflicts in such situations.

This policy will apply to consultants that currently provide investment advisory services to the CRF. Accordingly, the CRF will not consider any new investment opportunity with such a consultant or its affiliate, except as provided herein.

Language implementing this policy will be included in future contracts with consultants to provide investment advisory services to the CRF.

**Disclosure of Other Lines of Business RFP, RFPI**

Any request for proposals (RFP), request for proposals by invitation (RFPI) or similar solicitation of proposals from consultants to provide investment advice to the CRF shall include, without limitation, the following questions or requests for information:

1. Whether the proposer is an SEC registered investment advisor.
2. Proposer's other lines of business and approximate percentage of total revenue.
3. Proposer's investment allocation process among clients.
4. Potential conflicts, including economic or financial interests, fee or other compensation arrangements the proposer, its employees or affiliates have with sponsors (or affiliates) of private investment funds, other investment advisors, investment companies, broker dealers, municipal securities dealers and any other person or entity that could, or could be reasonably perceived to conflict with the proposer's ability to provide unbiased and objective investment advice to CRF.

**Fiduciary Duty and Potential Conflicts**

In all contracts for investment consulting services, the contracting party shall represent that it (i) does not have any conflict of interest not previously disclosed to the CRF in writing that could reasonably be expected to impair its ability to provide unbiased and objective investment advice or decisions, (ii) will promptly disclose in writing to the CRF any such conflict that it may have hereafter, and (iii) will annually file a statement with the CRF that it is in compliance with these requirements, which statement shall include the following language:

"[THE CONTRACTING PARTY] ACKNOWLEDGES THAT IT OWES THE COMPTROLLER AND THE FUND A FIDUCIARY DUTY. THIS MEANS THAT, AMONG OTHER THINGS, [THE CONTRACTING PARY] MUST DISCLOSE TO THE COMPTROLLER INFORMATION ABOUT MATERIAL CONFLICTS OF INTEREST. [THE CONTRACTING PARTY] ACKNOWLEDGES THAT FAILURE TO TRUTHFULLY COMPLETE THIS STATEMENT MAY RESULT IN CRIMINAL OR CIVIL LIABILITY."

**Obligation to Protect Confidential Information**

All contracts with consultants to provide investment advisory services to the CRF will include language obligating the consultant to protect confidential information pertaining to the CRF and to establish adequate internal control procedures to ensure that such confidentiality obligation is fulfilled.

**Annual Compliance Questionnaire**

All contracts with consultants to provide investment advisory services to the CRF will include language requiring that they complete the CRF's annual compliance questionnaire. The questionnaire will include questions to elicit information about potential conflicts with the interests of the CRF and how any such potential conflict is being managed.

**Restrictions on Seeking Investments**

All contracts with consultants to provide investment advisory services to the CRF will include language providing that the consultant shall not (a) directly or indirectly, for so long as the agreement remains in effect, seek any investment by or from the CRF with respect to a transaction with the consultant or any affiliate thereof unless specifically requested to do so by the CIO, or (b) use nonpublic information obtained from the provision of services under the consulting services contract in the execution of a particular private equity transaction. In addition, the consultant shall agree to establish appropriate internal compliance and monitoring procedures to prevent the occurrence of any of the foregoing.

**Where an Exception Applies; Process**

In the event the CIO requests that a consultant providing investment advisory services to the CRF present for consideration by the CRF an investment opportunity with a person or entity affiliated with the consultant, the following procedures will apply:

(a) Before asking any consultant or an affiliate thereof to present an investment opportunity to the CRF, staff will make a written request to the CIO for approval to do so, detailing why such a presentation would be in the best interests of the CRF.

(b) The staff request, CIO approval and the basis of the determination that it is in the best interests of the CRF will be documented in writing, included in the procurement record and provided to the Director of Compliance.

(c) Personnel involved in the provision of consulting services to the CRF will not make such presentation or provide investment services and must protect confidential information obtained in the course of providing consulting services.

(d) A qualified consultant that is independent of the transaction will conduct the requisite due diligence and recommendation to the CRF regarding the potential investment.

(e) In the context of the review of any transaction requiring REAC approval that may ultimately result from a presentation made under this exception, staff will report to REAC, that, at the request of the CIO, a person or entity affiliated with a CRF consultant presented the investment to the CRF, detailing how the potential conflict is being managed and explaining why this exception to the CRF's general policy precluding that circumstance is in the best interests of the Fund. With respect to other transactions that may result from a presentation made under this exception, staff will report the same information to the Internal Investment Committee (IIC) at the time such a proposed transaction is reviewed by IIC and to the Investment Advisory Committee (IAC) for its information after the transaction is concluded.

Originally Issued August 6, 2015

Re-Adopted without Change August 8, 2018

**SCHEDULE A**

**FUND’S CASH COLLATERAL INVESTMENT GUIDELINES**

**[To be inserted before RFP release]**

**SCHEDULE B**

**ELIGIBLE COLLATERAL AS OF THE EFFECTIVE DATE OF THIS AGREEMENT**

1. Cash denominated in United States dollars;
2. Letters of Credit with capital, surplus, and undivided earnings in excess of 100 million dollars; and
3. The following securities, defined as (U.S. Government Securities):
   * + U.S. Treasuries and U.S. Treasury Strips;
     + U.S. Government agencies and Government-sponsored enterprises, excluding interest-only or principal-only issues of the Federal National Mortgage Association (“**FNMA**”), Federal Home Loan Bank, Federal Home Loan Mortgage Corporation (“**FHLMC**"), Federal Farm Credit Bank, Federal Agricultural Mortgage Corporation, Resolution Funding Corporation, and Student Loan Marketing Association; and
     + Mortgage Backed Securities, excluding interest-only or principal-only issues of the Governmental National Mortgage Association, FNMA, and FHLMC.

**SCHEDULE C**

**TERM LOANS**

1. Early Terminations. In the event the Contractor or Approved Borrower seeks to terminate a Term Loan prior to its designated termination date (“**Early Termination Date**”), Contractor and Borrower shall, unless otherwise agreed, use their best efforts to negotiate in good faith a new Term Loan (the “**Replacement Loan**”) of comparable or other Securities, which shall be mutually agreed upon by Contractor and Borrower, with a Market Value equal to the Market Value of the Term Loan Amount under the terminated Term Loan (the “**Terminated Loan**”) as of the Early Termination Date. Each Replacement Loan shall be subject to the same terms as the corresponding Terminated Loan, other than with respect to the commencement date and the identity of the Loaned Securities. The Replacement Loan shall commence on the date on which Contractor and Borrower agree which securities shall be the subject of the Replacement Loan and shall be scheduled to terminate on the scheduled Termination Date of the Terminated Loan. If Contractor and Borrower enter into a Replacement Loan, the Collateral for the related Terminated Loan need not be returned to Borrower and shall instead serve as Collateral for such Replacement Loan.
2. Events of Termination. Contractor shall terminate any Term Loan as soon as practicable after:
   1. receipt by Contractor of a notice of termination of the respective SLA;
   2. receipt by Contractor of a notice of termination of the respective Borrower;
   3. receipt by Contractor of written Instructions from the CRF directing it to terminate the Term Loan;
   4. receipt by Contractor of written Instructions to delete a Borrower from the Approved Borrower' List;
   5. receipt by Contractor of notice advising that an Event of Default has occurred and is continuing beyond any applicable grace period; or
   6. termination of this Agreement.

**SCHEDULE D**

**MASTER SECURITIES LENDING AGREEMENT**

**[TO BE NEGOTIATED WITH SELECTED PROPOSER]**

**SCHEDULE E**

**APPROVED BORROWER LIST**

**[List to be provided by the CRF to the Selected Proposer]**

**SCHEDULE F**

**APPROVED REPO COUNTERPARTY LIST**

**[List to be provided by the CRF to the Selected Proposer]**

**SCHEDULE G**

**SAMPLE FORM OF DAILY REPORT**

**[Included with Proposer’s Technical Proposal]**

**SCHEDULE H**

**RESTRICTED LIST**

**[LIST TO BE PROVIDED BY THE CRF TO THE SELECTED PROPOSER]**

1. These procedures apply to determinations by OSC or CRF to award a contract for the acquisition of any goods, services, or information technology, except that they do not apply to (i) decisions to invest or disinvest CRF assets in securities, properties, or other investment vehicles, (ii) selections of investment advisors or managers whose services are integral to the administration of CRF investments, and (iii) selection of counsel to represent the CRF in transactional, investment or litigation matters. Such CRF investment decisions and selections remain subject to the Comptroller’s fiduciary responsibilities, and are to be made in a fair and equitable manner in accordance with those responsibilities. [↑](#footnote-ref-1)
2. For the purposes of these procedures, the term “interested vendor” means a person or firm that has received or requested a Request for Information (RFI), an RFP, or an IFB issued by OSC or CRF. [↑](#footnote-ref-2)
3. For the purposes of these procedures, the term “substantive question” means an inquiry concerning a material requirement of the procurement process, such as a technical specification or a financial prerequisite. The term does not apply to ministerial matters, such as the time and place or manner of submitting a bid or proposal. [↑](#footnote-ref-3)
4. For the purposes of these procedures, the term “improper influence” means any attempt to achieve preferential, unequal, or favored consideration of a bid or proposal based on considerations other than the merits of the proposal, including but not limited to, any conduct prohibited by the Ethics in Government Act, as set forth in Public Officers Law sections 73 and 74. [↑](#footnote-ref-4)
5. For the purposes of these procedures, the term “attempt to influence the procurement process” means any attempt to influence any determination by OSC or CRF by a person other than an OSC employee with respect to (i) the solicitation, evaluation or award of a procurement contract; or (ii) the preparation of specifications or request for submissions of bids or proposals for a procurement contract. [↑](#footnote-ref-5)