

**PENSION BENEFIT INFORMATION CERTIDEATH® CONTRACT FOR SERVICE
AGREEMENT
NEW YORK STATE COMPTROLLER'S CONTRACT NUMBER C001146**

This CertiDeath® contract for service agreement (hereinafter, this “**Agreement**”) is entered into as of July 1, 2022 (the “**Effective Date**”) by and between **Pension Benefit Information, LLC** (d/b/a PBI Research Services), a Delaware limited liability company (“**PBI**”), with offices at 333 South Seventh Street, Suite 2400, Minneapolis, MN 55402, and **the Comptroller of the State of New York, as Administrative Head of the New York State & Local Retirement System** (“**Client**”), whose main office and principal place of business is 110 State Street, Albany, New York, 12244. PBI and Client are each a “**Party**” and together, they are the “**Parties**.”

WHEREAS, Client and PBI previously entered into a Platinum-Plus Death Audit Contract for Service, dated April 10, 2015, as amended (collectively, the “**Prior Contract**”); and

WHEREAS, Client wishes to upgrade from Basic Death Audit services to CertiDeath® services, and PBI wishes to perform such CertiDeath® services; and

WHEREAS, the Parties intend to terminate that Prior Contract and replace it with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Client and PBI agree as follows:

1. PURPOSE OF THIS AGREEMENT: PBI engages in the business of compiling, maintaining and disseminating to its clients death information received from its sources. Client maintains a list of persons to whom benefits are or may be paid (hereinafter referred to as “**Recipient File**”). Client wishes to engage the services of PBI to provide the Services set forth in Section 2 for Client’s lists of recipients.

2. SERVICES TO BE RENDERED BY PBI:

- (a) Services. PBI shall render the CertiDeath® services for the benefit of Client as set forth in Appendix II, attached hereto and incorporated herein (“**Services**”).
- (b) Performance. PBI will use commercially reasonable efforts to deliver the Services requested by Client hereunder and pursuant to a mutually signed Transmittal Form (referred to herein as “a **Transmittal Form**”) (see attached Appendix III – CertiDeath® Services Transmittal Form) and to compile information gathered from selected public or government records and other sources used in the provision of the Services. For clarity, Services ordered by Client through the PBI Reporting Platforms (as defined in Section 21 below) shall be deemed to be a mutually executed Transmittal Form. Each Transmittal Form is hereby incorporated by reference into this Agreement and all references to this Agreement shall be deemed to include the Transmittal Form. PBI reserves the right to add materials and features to, and to discontinue offering any of the materials and features that

are currently a part of, the Services. In the event that PBI discontinues a material portion (except for Third-Party Data (as defined below)) of the Services included in a Transmittal Form, PBI will refund any pre-paid Fees to Client for such Services. For clarity, the availability of Third-Party Data may change from time to time. PBI shall not be required to deliver, nor shall Client request PBI to deliver, Services related to individuals residing outside of the United States.

3. FEES: Client shall pay to PBI the fees as set forth on the **Appendix I, Cost Sheet for Account 17375**. Total compensation under this Agreement shall not exceed **\$741,759**.

(a) Invoicing.

- (i) Within thirty (30) days of (i) execution of a Transmittal Form or (ii) Client's upload of a Recipient File (and on the anniversary date each year thereafter for each Recipient File), PBI shall invoice Client for the Fees.
- (ii) All invoices must include the following information: (i) New York State Office of the State Comptroller's ("OSC") Agreement #C001146, Contractor's taxpayer identification number, and Contractor's New York State Vendor Identification Number; (ii) a description of the Services provided; (iii) the total amount billed for Services for the invoice period; and (iv) the beginning and ending dates of the billing period included in the invoice, and (v) the expiration date of this Agreement.
- (iii) All invoices shall be subject to OSC's acceptance of the Services for which billing is being made and are to be submitted via email (preferred) to contractinvoices@osc.ny.gov or via hard copy mail to:

ATTN: Contracts Payment Unit
Bureau of Finance
Office of the State Comptroller
110 State Street, Stop 13-2
Albany, NY 12236-0001

With a copy to ERS_Purchasing@osc.ny.gov (preferred) or via hard copy mail to:

ATTN: Retirement Services
New York State and Local Retirement System
110 State Street, Stop 7-9A
Albany, NY 12244

- (b) Payment. Payment of any undisputed invoice is due within thirty (30) days of the invoice date and should be made in accordance with New York State Finance Law, Article 11-A (Prompt Payment Law).

- (c) Taxes. The charges for all Services are exclusive of any state, local, or sales, use, or similar taxes. Client is not responsible for any taxes charged on PBI's income. Client shall provide PBI with documentation evidencing Client's tax exempt status.

4. COMPLIANCE WITH LAW.

- (a) Laws. Each Party shall comply with, and cause its employees who access the Services to comply with, laws and regulations applicable to the Services in all material respects. Each Party is solely responsible for its own compliance obligations. PBI expressly disclaims that the Services are, and no Services shall be deemed to be, regulatory, compliance, legal, retirement fund/plan, ERISA or tax advice, counsel, or opinion.
- (b) Equal Employment Opportunity ("EEO") Reporting. PBI agrees to comply with applicable federal, state, and local requirements concerning equal employment opportunities for minorities and women, including but not limited to Executive Law § 312 and its implementing regulations. In the event that any of the Services shall be provided in New York State, PBI shall submit to the address set forth above in Section 3(a)(iii): Attention Director of Finance, two originals and two copies of Appendix B forms prior to execution of this Agreement and shall submit on a semi-annual basis thereafter Form AC 3239-B (Contractor's/Subcontractor's EEO Workforce Utilization Report).

5. SECURITY.

- (a) PBI's Data Security Controls. PBI shall maintain data privacy and security controls that are designed to protect the security of the Services and the data in PBI's control including, without limitation, physical, network, application security and development, and data leakage prevention.
- (i) PBI agrees that: (i) its employees and agents will be required, as a condition of employment or retention, to protect Client Confidential Information in PBI's possession or otherwise acquired by or accessible to PBI; (ii) its employees and agents who will be provided access to, or otherwise come into contact with, the Client Confidential Information, will receive appropriate training relating to the protection of Client Confidential Information; (iii) it will limit access to Client Confidential Information to the minimum number of PBI's employees and agents who require such access for purposes set forth herein; and (iv) it will impose appropriate disciplinary measures for violations of its information security policies and procedures. PBI shall be responsible for PBI's Third-Party Data providers' acts and omissions related to this Agreement.
- (ii) If PBI disposes of any paper or electronic record containing Client Confidential Information, PBI will do so in an appropriate manner based on the sensitivity of the information in order to prevent unauthorized access to such information in connection with its disposal. Upon request, PBI will certify to Client that all forms of the Client Confidential Information disposed of have been destroyed in

accordance with PBI's record retention policies and procedures, and will describe any exceptions.

- (b) PBI's Third-Party Review of Security Controls. PBI shall complete the following with a third-party service provider: annual SOC 2, Type 2 Audit (or an equivalent or successor); annual application penetration test; and monthly network vulnerability scan. PBI shall reasonably remediate findings identified in such audit, test, or scan. Upon request and subject to the obligations of confidentiality set forth in this Agreement, PBI shall deliver the reports described in this subsection to Client.
- (c) Business Continuity. PBI shall maintain business continuity and disaster recovery policies and procedures and shall annually test such policies ("**Business Continuity Plan**"). PBI shall reasonably remediate findings identified in such test. Upon request and subject to the obligations of confidentiality set forth in this Agreement, PBI shall deliver the Business Continuity Plan and annual test results described in this subsection to Client.
- (d) Encryption. PBI shall encrypt the production data maintained in the applications used to provide the Services while at rest and in transit.
- (e) Production Data Maintained in the U.S. PBI shall maintain the production data in the applications used to provide the Services within the United States of America at all times.
- (f) Security Requirements. Each Party acknowledges that the information entered into and/or accessed through the Services may include personally identifiable information and it is each Party's obligation to keep all such information confidential and secure. Accordingly, each Party (as applicable) shall (i) restrict access to Services and the information contained therein to those employees who have a need to know as part of their official duties; (ii) take commercially reasonable measures to prevent unauthorized access to, or use of, the Services or data received therefrom, whether in electronic form or hard copy, by any person or entity; and (iii) with respect to Client, unless otherwise required by law or pursuant to a Party's policies, purge all bulk information received through the Services, whether stored electronically or on hard copy by a Party, within ninety (90) days of initial receipt in order to prevent such bulk data from being made into a competing product with the Services. Each Party will implement policies and procedures to prevent unauthorized use of its user IDs (where such user IDs permit access to the other Party's systems or applications or data (as applicable)) ("**User IDs**"), in connection with the Services. The designated administrator of Client's account with PBI shall be responsible for appropriate use, access, and protection of User IDs. Each Party will promptly notify the other Party, in writing if such Party reasonably suspects or confirms that one of its User IDs has been (1) lost, stolen, compromised, misused or used, accessed, (2) acquired in an unauthorized manner or by any unauthorized person, or (3) used for any purpose other than legitimate business reasons. Subject to Section 9(d)(2), each Party shall remain liable for all costs associated therewith and shall further reimburse the other Party for any expenses it incurs due to such Party's failure to prevent such impermissible use or access of User IDs and/or the Services or the other Party's data, or any actions required as a result thereof.

- (g) Security Event. If the Services include personally identifiable information (including, but not limited to, social security numbers, driver's license numbers or dates of birth), the following shall apply: upon unauthorized acquisition of or access to such personally identifiable information, including but not limited to that which is due to use by an unauthorized person or due to unauthorized use (a "**Security Event**"), then the Party discovering the Security Event shall promptly notify the other Party. In the event of a Security Event, the Party whose data is subject to the Security Event, where the Security Event was caused by the other Party, may take immediate action, including termination of this Agreement and any Transmittal Form.

6. LICENSES.

- (a) Restricted Data License Grant. Client understands that the data PBI discloses in the Services may include data from third-party data providers, including but not limited to government and commercial data sources ("**Third-Party Data**"). PBI's ability to license Third-Party Data to Client under this Agreement and as may be described in a Transmittal Form is subject to the restricted license granted to PBI by such Third-Party Data providers. PBI hereby grants to Client a non-exclusive, nontransferable, restricted license to use the Services set forth herein or as set forth in a Transmittal Form solely for Client's own internal business purposes subject to the applicable Flow Down Obligations (defined below in Section 18) and Restrictions on Use (as defined below) (collectively, the "**Restricted Data License Grant**"). If Client is a third-party administrator and discloses such status on the Transmittal Form ("**TPA**"), then Client may disclose the data in the Services to its TPA customers identified on the applicable Transmittal Form ("**Client's Customers**"). Such disclosure may only be in the course of providing TPA services, provided that Client's disclosure to the applicable Client's Customer shall require such Client's Customer to comply with the Restricted Data License Grant and use the data included in the Services solely for internal business purposes. Client shall be responsible and liable for Client's Customers' compliance with the terms and conditions in this Agreement and use of the data disclosed in the Services, including but not limited to, compliance with the Restricted Data License Grant (as if Client's Customer were Client). If Client or Client's Customer breaches the terms and conditions of this Section 6.a., PBI may terminate the Restricted Data License Grant set forth herein.
- (b) Restrictions on Use. Client represents and warrants that ("**Restrictions on Use**"):
- (i) Client has the right to disclose the data disclosed by Client to PBI under this Agreement or as described in a Transmittal Form, and Client has the right to receive the data disclosed by PBI to Client under this Agreement or as described in a Transmittal Form.
 - (ii) All of Client's use of the Services shall be for only legitimate business purposes relating to its business and as otherwise governed by this Agreement.
 - (iii) Client shall not use the Services for marketing purposes or resell or broker the Services to any third-party and shall not use, and shall prevent its users from using, the Services for personal (non-business) purposes.

- (iv) Client shall not use the Services to provide data processing services to third-parties or evaluate the data of or for third-parties, without PBI's prior written approval.
- (v) Client shall not access the Services from Internet Protocol addresses located outside of the United States and its territories without PBI's prior written approval.
- (vi) Client shall not use the Services to create a competing product.
- (vii) Client shall not use the data it receives under this Agreement or any Transmittal Form for a Prohibited Medical Segment Use, and Client shall not directly or indirectly resell the data it receives under this Agreement or any Transmittal Form to any Person for a Prohibited Medical Segment Use. For purposes of this subsection vii.: "**Person**" means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity; and "**Prohibited Medical Segment Use**" means (A) the use of the data by a biopharma, life sciences or biotech firm ("**Bio Firms**") to perform or provide research, data, analysis or related support for the development, commercialization, marketing, approval or reimbursement of pharmaceutical and medical devices and (B) the direct or indirect sale by data aggregators of research datasets to Bio Firms which will be used to perform research, analysis or related support for the development, commercialization, marketing, approval or reimbursement of pharmaceutical and medical devices. The restrictions in this subsection vii. shall survive termination of this Agreement.

(c) Additional Terms Related to the Restricted License. Client agrees that, if PBI determines or reasonably suspects that Client is violating any provision of this Agreement, PBI may take immediate action, including, without limitation, terminating the delivery of, and the license to use the Services. PBI may at any time mask or cease to provide Client access to any Services or portions thereof which PBI may deem, in PBI's sole discretion, to be sensitive or restricted information (subject to the fifth sentence of Section 2(b), stating that "In the event that PBI discontinues a material portion (except for Third-Party Data (as defined below)) of the Services included in a Transmittal Form, PBI will refund any pre-paid Fees to Client for such Services").

(d) Client Licenses to PBI.

- (i) Client hereby grants PBI a license to process data and other information, including Client's Confidential Information (as defined below) as applicable, provided by Client to PBI and, subject to Section 7.b (Confidentiality), to disclose such data to its affiliates and vendors to process such data or to perform the Services or to improve the Services by evaluating the thoroughness of PBI's database and data sources.
- (ii) Client hereby grants PBI a license to use the Client's Confidential Information (including but not limited data and information provided by Client to PBI hereunder or under a Transmittal Form) for internal purposes (including statistical and analytical purposes), subject to Section 7.b (Confidentiality).
- (iii) Client hereby grants PBI a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Client or its users

relating to the Services (each, a “**Submission**”). PBI shall not be required to compensate Client for any such Submission.

- (e) Deliverables. Client shall own all right and title to the reports (the “**Deliverables**”), if any, delivered by PBI, (i) subject to the Restricted Data License Grant set forth in this Section 6, (ii) subject to PBI’s rights to the underlying data that it provides (as set forth in Section 7.a.) that might be included in the Deliverables, and (iii) excluding PBI IP (as defined below). To the extent PBI IP is incorporated into a Deliverable, PBI hereby grants Client a nontransferable, nonsublicenseable, fully paid up, limited license to use PBI IP solely for internal business purposes and subject to this Agreement. If Client is a TPA, Client may disclose PBI IP to the applicable Client’s Customer set forth in this Agreement or on a Transmittal Form, provided that Client’s disclosure to such Client’s Customer shall be solely for Client’s Customer internal business purposes. If Client or Client’s Customer breaches the terms and conditions of this Section 6.e., PBI may terminate the license to PBI IP granted herein.

7. INTELLECTUAL PROPERTY; CONFIDENTIALITY.

- (a) Intellectual Property Rights. Each Party agrees that it shall not reproduce, retransmit, republish, or otherwise transfer for any commercial purposes the other Party’s information, or with respect to the Client, PBI’s Services, programs, or computer applications. Each Party acknowledges that such Party (and/or its Third-Party Data providers) shall retain all right, title, and interest under applicable contractual, copyright, patent, trademark, Trade Secret (as defined below) and related laws in and to the data and information that it provides, and with respect to PBI, PBI (and/or its Third-Party Data providers) shall retain such rights, title, and interest in the Services. Each Party shall use such materials in a manner consistent with the other Party’s interests and the terms and conditions herein, and shall notify the other Party of any threatened or actual infringement of a Party’s rights. For clarity, PBI maintains all right, title, and interest to and in of all of its software, source code, object code, systems, services, data, death matches made in its applications or systems or confirmed through PBI’s business processes, and forms of Deliverables (including but not limited to all components, modifications and derivations thereof) that PBI offers to its customers generally (“**PBI IP**”), and PBI expressly reserves all rights not expressly granted to Client under this Agreement.
- (b) Confidentiality. Client and PBI acknowledge that they each may have access to confidential information of the disclosing Party (“**Disclosing Party**”) relating to the Disclosing Party’s business including, without limitation, personally identifiable information, recipient information, technical, financial, strategies and related information, computer programs, algorithms, know-how, processes, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined below) and other information (whether written or oral), and in the case of PBI’s information, product information, product development plans, forecasts, proposals, cost and pricing information (other than the total contract price and fees paid subject to FOIA in subsection (c) below), data contained in Services, vendor assessment materials, policies and procedures, descriptions of technical controls and other business information (“**Confidential Information**”).

Confidential Information shall not include information that: (i) is or becomes (through no improper action or inaction by the Receiving Party (as defined below)) generally known to the public; (ii) was in the Receiving Party's possession or known by it prior to receipt from the Disclosing Party; (iii) was lawfully disclosed to Receiving Party by a third-party and received in good faith and without any duty of confidentiality by the Receiving Party or the third-party; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party by employees of the Receiving Party who have had no access to such Confidential Information. "**Trade Secret**" shall be deemed to include any information which gives the Disclosing Party an advantage over competitors who do not have access to such information as well as all information that fits the definition of "trade secret" set forth in applicable law. Each receiving Party ("**Receiving Party**") agrees not to divulge any Confidential Information or information derived therefrom to any third-party (except as set forth in this Agreement) and shall protect the confidentiality of the Disclosing Party's Confidential Information with the same degree of care it uses to protect the confidentiality of its own confidential information and trade secrets, but in no event less than a reasonable degree of care. Each Party's obligations with respect to Confidential Information shall continue for so long as such Confidential Information continues to constitute Confidential Information.

- (c) Government Clients. If Client is a government entity or is otherwise subject to a federal, state, or local freedom of information act or similar statute or regulation ("**FOIA**"), then Client agrees that the confidentiality obligations of this Agreement prevent Client from disclosing the Services (and data included therein) in response to a FOIA request to the greatest extent permitted by law. Notwithstanding the foregoing, the death data and personally identifiable information provided under this Agreement is from government sources that prohibit redisclosure and as such will not be disclosed in response to a FOIA request. The Parties agree that total contract price and fees paid to PBI hereunder are Confidential Information and, unless exempt under FOIA, may be disclosed pursuant to FOIA.
- (d) In the event that the Receiving Party receives a request to disclose all or any part of the Disclosing Party's Confidential Information under the terms of a subpoena or order issued by a court or other governmental body, the Receiving Party agrees (i) to notify the Disclosing Party as promptly as possible of the existence, terms, and circumstances surrounding such request so as to allow the Disclosing Party to have an opportunity to obtain a protective order to prohibit or restrict such disclosure at its sole cost and expense, (ii) to reasonably consult with the Disclosing Party on the advisability of taking legally-available steps to resist or narrow such request, and (iii) if disclosure of such Confidential Information is required to prevent the Receiving Party from being held in contempt or subject to other penalty, to furnish only such portion of the Confidential Information that it is legally compelled to disclose. The Parties shall take reasonable steps to ensure that Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information.

8. DISCLAIMER OF WARRANTIES. Client accepts all information “AS IS.” Client acknowledges and agrees that PBI obtains data from third-party sources, which may or may not be completely thorough and accurate, and that **PBI does not make and hereby disclaims any warranty, express or implied, with respect to the Services. PBI does not guarantee or warrant the correctness, currentness, completeness, merchantability, or fitness for a particular purpose of the Services or information provided therein, including but not limited to those warranties that might be implied from a course of dealing, course of performance or trade usage. In no event shall PBI be liable for any indirect, incidental, or consequential damages, however arising, incurred by Client from receipt or use of information delivered hereunder or the unavailability thereof.** Due to the nature of public record information, the public records and commercially available data sources used in the Services may contain errors. Source data is sometimes reported or entered inaccurately, processed poorly or incorrectly, and is generally not free from defect. PBI’s Services are not the source of data, nor are they a comprehensive compilation of the data. PBI’s Services may contain links to third-party websites not under PBI’s control or operation. PBI may provide any such links only as a convenience, and PBI does not endorse, is not responsible for, and does not have control over the contents of any linked website or any link contained within a linked website. Use of third-party content on a linked website may be subject to such third-party’s terms and conditions. Client accepts all risk of clicking on a linked website and is solely responsible for its use of content contained on any such linked website. For certain Services, PBI’s personnel use proprietary methods to determine whether death data from multiple sources is relevant to a particular individual (“**Death Matching**”) and because of the inherent limitations in the data relied upon, PBI shall not be responsible or liable for any inaccurate or incomplete Death Matching. Death Matching is an analysis attributable to PBI and does not represent a finding or conclusion on behalf of PBI’s data sources. Client shall not rely on PBI for the accuracy or completeness of information supplied through the Services. Before relying on any data, PBI recommends that such data should be independently verified.

9. INDEMNIFICATION AND LIABILITY, INCLUDING CAP AND LIMITATIONS

- (a) **PBI Liability.** PBI shall be liable to Client for Losses (defined below) incurred by Client, without limitation, arising from or related to (i) personal injury (including death) caused by PBI, (ii) damage to real or tangible personal property caused by PBI; or (iii) a Security Event involving Client Data, caused by the negligent acts or omissions of PBI, its employees or agents; except, in each case, to the extent that any such Losses are caused by the negligence, gross negligence, or willful misconduct of the Client. “**Losses**” are any costs, claims, demands, losses, liabilities, damages, and attorneys’ fees and costs.
- (b) **PBI Indemnification.** PBI agrees to protect, indemnify, defend, and hold harmless Client, without limitation, from and against third-party Losses arising from or related to (i) personal injury (including death) caused by PBI; (ii) damage to real or tangible personal property caused by PBI; and (iii) a Security Event involving Client Data, caused by the negligent acts or omissions of PBI, its employees or agents; and (iv) any third-party claim that the Services or data contained therein (except for Third-Party Data or third-party materials), when used in accordance with this Agreement, infringe

a United States patent or United States registered copyright; provided, however, that PBI shall not be obligated to indemnify Client under this Section 9(b) for that portion of any Loss caused by the negligence, gross negligence, or willful misconduct of the Client.

- (c) **Client Indemnification.** PBI provides Client with proprietary death information services, which includes information obtained the Death Master File (“**DMF**”) collected, maintained, and released by the U.S. Social Security Administration under various rules and regulations, including, without limitation, rules promulgated by the National Technical Information Service (NTIS), U.S. Department of Commerce (15 CFR Part 1110). Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, Client shall hold the DMF Data Providers (as defined in Attachment 2) and PBI harmless from and indemnify them from any final judgment of a court of competent jurisdiction the extent attributable to Client’s, Client’s employees’, or Client’s officers’ negligent use of the DMF when acting within the course and scope of their employment. Client shall not provide any of its contractors access to the DMF data provided hereunder by PBI, and in the event Client authorizes such access, Client shall be responsible for Client’s contractors’ negligent use of the DMF.

(d) Cap and Limitations:

- (1) Notwithstanding Section 9(b), PBI will not have any duty to indemnify, defend or hold harmless Client with respect to any claim of infringement resulting from (i) Client’s misuse of the Services; (ii) Client’s failure to use any corrections made available by PBI; (iii) Client’s use of the Services in combination with any product or information not provided or authorized in writing by PBI; (iv) any information, direction, specification or materials provided by Client or any third-party at the direction of Client; or (v) claims based on data provided by third-parties. If an injunction or order is issued restricting the use or distribution of any part of the Services, or if PBI determines that any part of PBI Services is likely to become the subject of a claim of infringement or violation of any proprietary right of any third-party, PBI may in its sole discretion and at its option (A) procure for Client the right to continue using the Services; (B) replace or modify the Services so that they become non-infringing, provided such modification or replacement does not materially alter or affect the use or operation of the Services; or (C) terminate this Agreement and refund any Fees relating to the future use of the Services.
- (2) For all claims, liabilities and expenses arising under or related to this Agreement, except where indemnification or liability is otherwise set forth in this Agreement as being without limitation, and regardless of the cause of the loss or injury, and regardless of the nature of the legal or equitable right claimed to have been violated, PBI’s aggregate liability shall never exceed the fees paid by Client to PBI in the twelve (12) months immediately prior to the incident giving rise to the applicable liability; and Client shall not sue PBI for an amount greater than such sum even if

Client and/or third-parties were advised of the possibility of such damages and Client shall not seek punitive damages in any suit against PBI.

10. INDEMNIFICATION PROCEDURES.

- (a) Indemnification Procedures. A Party seeking indemnification (the “**Indemnified Party**”) under this Agreement must (i) promptly give written notice of any claim to the other Party (the “**Indemnifying Party**”) and (ii) provide any assistance which the Indemnifying Party may reasonably request for the defense of the claim. The Indemnifying Party has the right to control the defense or settlement of the claim; provided, however, that the Indemnified Party shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing or in the case of Client, where a significant public interest is at stake, in any case at the Indemnified Party’s own expense.

11. TERM; TERMINATION.

- (a) Term. This Agreement is valid from the “Effective Date” for a period of three (3) years, each such one-year period to be a “**Term**.” Thereafter, the Parties shall have the option to extend this Agreement for two (2) additional successive Terms, each such Term to be for a period of up to one (1) year, upon written mutual agreement.
- (b) Termination. Either Party may terminate this Agreement (i) upon notice by either Party following a breach of the other Party of any of its obligations hereunder or thereunder that are not cured within thirty (30) calendar days of receiving written notice of such breach from the terminating Party, (ii) without cause in the event of a bankruptcy or insolvency of the other Party, or (iii) it becomes a violation of law for either Party to perform its obligations hereunder.

Either Party may provide to the other written ninety (90) day advance notice of termination prior to the end of the then-current Term, with the effective date being the last day of such then-current Term. In addition, Client may terminate this Agreement with ninety (90) days advance notice in the event that funds are not appropriated and available for this Agreement, in which such event Client shall have no obligation to pay for Services not yet performed.

12. AUDIT RIGHTS.

- (a) Client Audit. From time to time, upon reasonable advance notice, PBI shall provide Client or its designee with access to the locations from which the Services are being performed, and all data and records relating to the Services for the purpose of performing audits or inspections (i) to comply with regulatory requirements or requests by Regulators, (ii) to determine if the Services are in compliance with the terms of this Agreement, and (iii) to determine the accuracy of the charges. Upon request, PBI will provide Client with its standard vendor due diligence materials. Client may request that PBI complete Client’s vendor due diligence questionnaires, assessments or audits and PBI’s completion or

participation in the completion of such questionnaires, assessments or audits shall be at Client's expense and subject to the confidentiality obligations of this Agreement.

- (b) PBI Audit. PBI may perform reasonable audits of Client's compliance with this Agreement by providing prior written notice to Client, and Client shall reasonably cooperate with such audit. Such audits shall be during Client's regular business hours, at PBI's expense, and occur no more than once per year, unless otherwise more frequently required by a data provider or regulator.

13. MAINTENANCE OF CLIENT DATA. PBI shall not be obligated to retain Client's data uploaded to PBI's systems (including but not limited to Client's Confidential Information and personally identifiable information) and may delete Client's data, in accordance with PBI's data destruction policy, after completion of the Services provided as applicable to the specific data. Neither PBI, nor its subsidiaries and affiliates, any Third-Party Data provider, nor any PBI vendor, shall be liable to Client for any loss or injury arising out of, related to, or caused in whole or in part by PBI's deletion of such data as set forth in this section. If, notwithstanding the foregoing, liability can be imposed on PBI, then Client agrees that PBI's aggregate liability shall be as set forth in Section 9(d)(2) of this Agreement. Nothing herein diminishes PBI's obligation to comply with Paragraph 10 Records of Appendix A, requiring PBI to maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to its performance of Services under this Agreement.

14. BACKGROUND CHECKS. Each Party shall require background checks of employees or users who access the Client's data (with respect to PBI) and the Services (with respect to Client). Specifically, PBI's background checks include: drug screening; social security trace; education (highest degree earned); employment verification; federal, state and county criminal background checks; multi-state jurisdictional criminal records locator; Denied Persons List; FDIC; Federal Reserve; National Credit Union; Office of Thrift; NASD; OFAC; Terrorist Watchlist; Excluded Parties List System; FDA debarment; and Federal Criminal Records.

15. INSURANCE. PBI shall maintain, at all times during the Term of this Agreement the insurance policies described herein with carriers rated no less than "A" by AM Best. PBI shall deliver certificates of insurance to the Client upon request. As of the date hereof, PBI maintains the following insurance coverages (with carriers rated at least A X):

- (a) All worker's compensation insurance coverages required by federal, state or local law;
- (b) Commercial general liability insurance with a limit of two million dollars (\$2,000,000) in the aggregate;
- (c) An umbrella policy with a limit of five million dollars (\$5,000,000) in the aggregate that is in excess of coverage provided under PBI's general liability insurance;
- (d) Errors & omissions insurance with total limits of twenty million dollars (\$20,000,000) in the aggregate;
- (e) Cyber liability and technology errors & omissions insurance in a limit of five million dollars (\$5,000,000) in the aggregate; and
- (f) Commercial crime insurance with a limit of five million dollars (\$5,000,000) in the aggregate.

Upon Client's written request, Client shall be an additional insured with a waiver of subrogation on the general liability insurance described under Section 15(b) above.

Where PBI provides distribution management, treasury management or uncashed checks services to Client, Client shall include PBI, its affiliates and their respective directors, officers, contractors, and employees under Client's ERISA fidelity bond.

16. SURVIVAL. Appendix A and provisions hereof related to fees and taxes (to the extent payment obligations remain) (Section 3); security (Section 5); licenses (Section 6); intellectual property and confidentiality (Section 7); disclaimer of warranties (Section 8); indemnification and liability, including cap and limitations (Section 9); indemnification procedures (Section 10); audit rights (Section 12)(for a period of five (5) years); maintenance of records (Section 13); survival (Section 16); Third-Party Data provider obligations (Section 18)(including Attachments 1 and 2); privacy principles (Section 19); publicity (Section 22); notices (Section 24); governing law and forum (Section 29); miscellaneous (Section 30); no third-party beneficiaries (Section 32); non-fiduciary status (Section 33); and retirement plan participants (Section 34) shall survive any termination of this Agreement or any Transmittal Form.

17. EMPLOYEE TRAINING. Each Party shall train its employees on the obligations under this Agreement prior to allowing access to Services. In addition, as of the date hereof, PBI requires the following training of its employees on an annual basis and shall maintain at least this level of training throughout the Term of the Agreement: US data privacy and security, information security, and HIPAA.

18. THIRD-PARTY DATA PROVIDER OBLIGATIONS.

(a) Third-Party Flow Down Requirements. Client understands that PBI obtains Third-Party Data from Third-Party Data providers that require PBI to flow-down certain obligations as set forth in Attachments 1 and 2 (the "**Flow Down Obligations**"). The Flow Down Obligations are hereby incorporated by reference into the Restricted Data License Grant as set forth herein, to the extent applicable to the Services.

(b) Client Credentialing.

- (i) Client acknowledges that PBI is required to credential PBI's clients prior to permitting access to the Services. Client represents and warrants that the information about Client on a Transmittal Form provided during the credentialing process or in connection with the purchase of Services (the "**Client Credentialing**") is accurate and complete in all material respects. PBI may be required to disclose Client's information related to the Client Credentialing to PBI's commercial data vendors, and Client hereby consents to such disclosure.
- (ii) Client shall notify PBI promptly of any changes to the Client Credentialing, and PBI may terminate this Agreement if such changes are material as reasonably determined by PBI. Client is required to promptly notify PBI of a change in

ownership of Client's company, any change in the name of Client's company, and/or any change in the physical address of Client's company.

19. PRIVACY PRINCIPLES. With respect to personally identifiable information regarding consumers, PBI has adopted privacy policy and principles ("**Principles**"), which may be modified from time to time, that recognize the importance of appropriate privacy protections for consumer data. Client agrees that Client (including its directors, officers, employees or agents) will comply with Client's own comparable privacy principles, policies, or practices.

20. CONSENTS. Client represents and warrants that it has obtained all required consents, approvals, permits, or authorizations required for its engagement of PBI to perform the Services.

21. PBI REPORTING PLATFORM. PBI maintains proprietary applications that are used to provide services to PBI's clients (the "**PBI Reporting Platform**"). PBI maintains all ownership rights with respect to the PBI Reporting Platform. During the Term of this Agreement and any Transmittal Form, Client and its authorized users (as identified in an end user agreement or requested in writing to be permitted access from time to time) shall have the right to access and use the PBI Reporting Platform solely for Client's own internal business purposes as permitted by the then current functionality of the PBI Reporting Platform and as necessary to use the Services. Client shall be responsible for its authorized users use of the Services and compliance with this Agreement and any Transmittal Form. Client shall not, and shall ensure its users shall not, (a) cause any code, files, scripts, agents or programs intended to do harm, including, for example viruses, worms, time bombs and Trojan horses, or other harmful code to be entered into the PBI Reporting Platform, (b) interfere with or disrupt the integrity or performance of the Services or the PBI Reporting Platform, (c) attempt to gain unauthorized access to the PBI Reporting Platform, or PBI's systems or networks, or (d) copy any part, feature, function or user interface of the PBI Reporting Platform.

22. PUBLICITY. Without the other Party's written consent, neither Party will (a) name the other Party or refer to its use of the Services in any press releases, advertisements, promotional or marketing materials, or (b) make any other third-party disclosures regarding PBI or Client's use of the Services. Notwithstanding the foregoing, a business referral in the ordinary course shall not be deemed to violate this Section 22.

23. RELATIONSHIP OF THE PARTIES. Neither Party shall, at any time, represent that it is the authorized agent or representative of the other Party. PBI provides the Services solely as an independent contractor, providing services to the Client.

24. NOTICES. All formal or legal demands, notices, reports, and/or communications under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, or duly sent by overnight mail, postage prepaid, to such Party at the address set forth below, or such other address as shall be designated by such person in a written notice to the other Party to this Agreement.

If to PBI:

Pension Benefit Information, LLC
333 S. 7th Street, Suite 2400
Minneapolis, MN 55402
Attention: President

With a copy to:

Pension Benefit Information, LLC
333 S. 7th Street, Suite 2400
Minneapolis, MN 55402
Attention: Legal Department
Email: legal@longevity.inc

Service of Process: Any service of process upon PBI by registered or certified mail, return receipt requested (solely as permitted by Section 17 of Appendix A) shall be sent to PBI's registered agent at the following address:

Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

With a copy to:

Pension Benefit Information, LLC
333 S. 7th Street, Suite 2400
Minneapolis, MN 55402
Attention: Legal Department
Email: legal@longevity.inc

If to Client:

Counsel to the Comptroller
New York State Office of the State Comptroller
110 State Street, 14th Floor
Albany, New York 12236

With a copy to:

Director of Finance
New York State Office of the State Comptroller
110 State Street, 13th Floor
Albany, New York 12236
Email: rfp@osc.ny.gov

25. UPDATES TO THIS AGREEMENT. By receipt of the Services, Client agrees to, and shall comply with, changes to the Flow Down Obligations as PBI shall make from time to time ("**Updates**") with notice to Client provided via Section 24, Notices. Client shall thereafter have the right to immediately terminate this Agreement upon notice to PBI, in the event Client determines that Client cannot accept or comply with the aforementioned Updates. Upon such notice of termination by Client, PBI will refund any pre-paid Fees to Client for Services not yet

performed. This Agreement and any amendment hereof, except as to Updates as set forth in the immediately preceding sentence, shall not be deemed executed, valid or binding unless and until approved in writing by the New York State Attorney General and thereafter, approved in writing by OSC's Bureau of Contracts pursuant to State Finance Law § 112, and filed in the Office of the State Comptroller. PBI may, at any time, impose restrictions and/or prohibitions on the Client's use of the Services or certain data ("**Restrictions**") in response to a change in law or regulation, or the interpretation thereof. Upon notification by PBI of any Update or Restriction (with notice as set forth in the first sentence of this Section 25), Client agrees to comply with such Update or Restriction; provided, that if Client does not agree to comply with the Update or Restriction, Client may terminate this Agreement and any Transmittal Form within thirty (30) days of receiving notice of a material Update or Restriction from PBI.

26. FORCE MAJEURE. The Parties will not incur any liability to each other or to any other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of, the Parties. Such events, occurrences, or causes include, without limitation, acts of God, telecommunications outages, Internet outages, power outages, any irregularity in the announcing or posting of updated data files by the applicable agency, strikes, lockouts, riots, acts of war, floods, earthquakes, fires, pandemics, and explosions.

27. ENTIRE AGREEMENT. This Agreement shall be deemed inclusive of the following documents and appendices which are set forth herein:

- Appendix A – Standard Clauses for New York State Contracts,
- Appendix B – Forms AC 3239-A, Contractor's EEO Staffing Plan of Anticipated Workforce and AC 3239-B, Contractor's/Subcontractor's EEO Workforce Utilization Report,
- Appendix C – OSC Policy Statement on Discrimination and Harassment, Including Sexual Harassment;
- Appendix D – OSC Executive Order on Procurement Integrity and OSC Procurement Integrity Procedures;
- Appendix E – Contractor's Certifications/Acknowledgements;
- Appendix F – Disclosure of Prior Non-Responsibility Determinations;
- Appendix I – Cost Sheet;
- Appendix II – Summary of Services (CertiDeath® Services);
- Appendix III - CertiDeath® Services Transmittal Form
 - Executed Transmittal Form(s), if any, specifically referencing this Agreement; and
- Appendix IV – End User Agreement
- Attachments 1 and 2 - Flow Down Obligations.

The Parties hereby terminate the Prior Contract. This Agreement constitutes the final written agreement and understanding of the Parties and is intended as a complete and exclusive statement of the terms of the Agreement, which shall supersede all other representations, agreements, and understandings, whether oral or written, which relate to the rendering of Services by PBI and use of the Services. Conflicts among the above-listed documents shall be resolved in

the following descending order of precedence, without regard to any statement regarding order of precedence otherwise: Appendix A – Standard Clauses for New York State Contracts; then this Agreement (this document), including Appendices B through and including F, Appendices I through and including IV, and Attachments 1 and 2.

Without limiting the foregoing, the provisions related to confidentiality and exchange of information contained in this Agreement shall, with respect to the Services and all matters within the scope of this Agreement supersede any separate non-disclosure or confidentiality agreement that has been entered into by the Parties hereto. Except as set forth in Section 25, UPDATES TO THIS AGREEMENT, regarding Restrictions and Updates to the Flow Down Obligations or Principles, any modification of this Agreement will be effective only if it is in writing, referencing this Agreement, and signed by both Client and PBI, approved in writing by the New York State Attorney General and thereafter, approved in writing by OSC's Bureau of Contracts pursuant to State Finance Law § 112, and filed in the Office of the State Comptroller. The terms contained herein shall supersede and govern in the event of a conflict between these terms and any new, other, or different terms in any other writing.

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

29. GOVERNING LAW; FORUM. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of New York, without reference to its conflicts of laws provisions, and the obligations, rights and remedies of the Parties under this Agreement shall be determined in accordance with such laws. All disputes arising out of or related to this Agreement will be adjudicated exclusively in the courts of competent jurisdiction in New York.

30. MISCELLANEOUS. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, invalid or otherwise unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and in any event the remaining provisions of this Agreement shall remain in full force and effect. The headings in this Agreement are inserted for reference and convenience only and shall not enter into the interpretation hereof.

31. RESPONSIBILITY TERMS.

- (a) PBI represents that it has, to its knowledge, truthfully and thoroughly completed, in all material respects and as of the date thereof, the Contractor's Vendor Responsibility Questionnaire ("**Responsibility Questionnaire**") provided to PBI by Client prior to execution of this Agreement. PBI represents that as of the date of execution of this Agreement, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Responsibility Questionnaire. Responses to the Responsibility Questionnaire are PBI's Confidential Information.
- (b) PBI shall update the Responsibility Questionnaire upon Client's reasonable request. Upon request, PBI shall annually re-review the Responsibility Questionnaire, noting any changes or indicating "no change" to Client. The Client reserves the right, in its sole discretion, at

any reasonable time during the Term of this Agreement, (a) to require updates or clarifications to the Responsibility Questionnaire, (b) to inquire about information included in or omitted from the Responsibility Questionnaire, and (c) to require PBI provide such information to Client within a reasonable timeframe.

- (c) Client reserves the right to make a final determination of PBI's non-responsibility ("**Determination of Non-Responsibility**") at any time during the Term of this Agreement based on (i) any information provided in the Responsibility Questionnaire and/or in any updates, clarifications or amendments thereof; or (ii) PBI's failure to disclose material information; or (iii) New York State's discovery of any other material information which pertains to PBI's responsibility. If Client preliminarily determines PBI to be non-responsible, Client shall provide written notice to PBI detailing the reason(s) for the preliminary determination, and shall provide PBI with an opportunity to be heard before the determination is finalized. Upon a Determination of Non-Responsibility, the Client reserves the right to terminate this Agreement for cause.
- (d) **Ethics Compliance.** PBI shall comply with the applicable requirements of Public Officers Law Sections 73 and 74, and other New York State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of the Agreement and/or other civil or criminal proceedings as required by law.

32. NO THIRD-PARTY BENEFICIARIES. This Agreement will inure to the benefit of and be binding upon the Parties to this Agreement, and their respective successors and permitted assigns, and no other person or entity (including any other person or entity with a direct or indirect interest in any pension, annuity, insurance policy, benefit plan, or other similar plans or policies) will have any right, remedy or obligation under this Agreement. The Parties agree that participants, pensioners, beneficiaries, policy owners, insureds, annuitants, legal representatives, benefits administrators, and any other similar persons or entities are not third-party beneficiaries to this Agreement, and that neither Party will claim such to be a third-party beneficiary.

33. NON-FIDUCIARY STATUS. Client agrees that PBI is performing only ministerial services at the direction of Client on behalf of Client under this Agreement and any Transmittal Form. Client represents that the ministerial services to be rendered by PBI under this Agreement and any Transmittal Form are consistent with the procedures and terms of the plans for which Client has engaged PBI to perform Services. Accordingly, Client, on behalf of itself, agrees that PBI is not intended to be a fiduciary, nor is it intended that PBI have the requisite authority or control, to perform any services or functions which could cause PBI to become a fiduciary, as defined in either (a) the Employee Retirement Income Security Act of 1974, as amended, ("**ERISA**") of any retirement plan or (b) any other applicable law. Furthermore, Client agrees that PBI shall not be obligated to perform any services or to take any actions which, in PBI's reasonable judgment, would cause PBI to be treated as a fiduciary under ERISA or any other applicable law, nor shall Client request that PBI perform such actions.

34. RETIREMENT PLAN PARTICIPANTS. Client represents that the participants with respect to whom PBI will be performing the Services are participants in a retirement plan maintained by Client which intends that such retirement plan satisfies in form and in operation the

requirements for being a tax-qualified retirement plan under the Internal Revenue Code of 1986, as amended. Client further understands and acknowledges that the accuracy of the foregoing representation is a condition precedent to PBI performing the Services under this Agreement or any Transmittal Form.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

CONTRACT NUMBER: C001146

THE COMPTROLLER OF THE STATE OF NEW YORK, AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE & LOCAL RETIREMENT SYSTEM

PENSION BENEFIT INFORMATION, LLC

By: [Signature]
Name: Jeremy R. Disare
Title: Director of Finance
Date: 10/13/2022

By: [Signature]
Name: Michael Schoonveld
Title: National Director of Sales
Date: 10/5/2022

PENSION BENEFIT INFORMATION, LLC'S ACKNOWLEDGEMENT

STATE OF Minnesota }
COUNTY OF Hennepin } SS.:

On the 5 day of OCTOBER in the year 2022, before me personally appeared Michael Schoonveld, known to me to be the person who executed the foregoing instrument, who, acknowledged to me that he/she maintains an office at 333 S. 7th St, Suite 2400, Minneapolis, MN and further that he is the National Director of Sales of Pension Benefit Information, LLC, the business described in the foregoing instrument; that he is authorized to execute the foregoing instrument on behalf of the business for the purposes set forth therein; and that, pursuant to that authority, he 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.

[Signature]
ANANDA-DE HOOG



APPROVED AS TO FORM:
NYS ATTORNEY GENERAL

APPROVED:
THOMAS P. DiNAPOLI, COMPTROLLER

BY:

BY:

DATE

DATE

APPROVED DEPT. OF AUDIT & CONTROL
Nov 10 2022 Melissa Burnash
FOR THE STATE COMPTROLLER

From: Maggi, Benjamin
Sent: Friday, November 4, 2022 11:20 AM
To: RFP; Contract Approval
Cc: Ashley Hamilton; Christine C. Anderson; Leah J. Mancini
Subject: Approved RE: OSC Contract # C001146 Pension Benefit Information LLC

Approved as to Form: 11/04/2022 by Benjamin Maggi
Received: 11/04/2022

OAG: CAS please file and enter. "P" Amount: 741,759

Reminder: Agencies must forward the contract approved by the OAG Contract Approval Section along with the email in which the OAG Contract Approval Section approved the contract, to OSC via the Comptroller's EDSS system. If you are not enrolled in the EDSS system and have not made alternative arrangements with OSC on how to submit your transaction, please contact OSC at [REDACTED] or email [REDACTED]

Benjamin L. Maggi
Section Chief
Contract Approval Section
New York State Office of the Attorney General
Contract Approval Section
The Capitol, Albany, NY 12224

ATTORNEY CLIENT PRIVILEGED/NOT FOR DISSEMINATION

The information contained in this electronic mail message is privileged and confidential and intended only for the individual or individuals named above. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender immediately to notify us of the error and delete the original message. Thank you.

APPENDIX D

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:
 - a. 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;
 - b. 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;
 - c. 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;
 - d. 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;

- e. 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;
 - f. 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 services¹ 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 vendor² 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 question³ 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. 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 influence⁴ relating to the vendor's bid

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.

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.

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.

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.

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 process⁵. 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.

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.

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