

INSURANCE BROKERAGE AND CONSULTING SERVICES AGREEMENT

THIS INSURANCE BROKERAGE AND CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of this ____ day of _____, ____ ("Effective Date") by and between [PLACEHOLDER FOR VENDOR NAME] [[PLACEHOLDER FOR LEGAL ENTITY TYPE AND JURISDICTION OF FORMATION] ("Broker"), whose principal place of business is [PLACEHOLDER FOR PRINCIPAL PLACE OF BUSINESS] and the Commonwealth of Pennsylvania, Public School Employees' Retirement System ("PSERS"), an independent agency of the Commonwealth of Pennsylvania, whose principal place of business is 5 North 5th Street, Harrisburg, Pennsylvania 17101. The Broker and PSERS are collectively referred to herein as the "**Parties**" and each individually as a "**Party**."

RECITALS:

WHEREAS, PSERS understands that cybersecurity issues, such as cybercrime, cyberattacks and data breaches present significant risks to computer systems, networks, and cloud computing assets, including those maintained and accessed by PSERS;

WHEREAS, PSERS desires to engage an insurance broker to provide brokerage and consulting services to PSERS regarding cybersecurity risks and the deployment of cyber insurance to protect PSERS against cybersecurity risks;

WHEREAS, PSERS issued PSERS' Request for Proposals for Cybersecurity Insurance Brokerage and Consulting Services, RFP Number PSERS RFP #2024-3 to solicit the engagement of an insurance broker to provide such services;

WHEREAS, the Broker submitted a response to PSERS' Request for Proposals for Cybersecurity Insurance Brokerage and Consulting Services, RFP Number PSERS RFP #2024-3 ("Proposal"); and

WHEREAS, PSERS desires to accept the Broker's response subject to the terms of a definitive written agreement and completion of the applicable Commonwealth of Pennsylvania procurement requirements.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other valuable consideration and intending to be legally bound hereby, PSERS and the Broker agree as follows:

1. Engagement. PSERS hereby engages the Broker, and the Broker hereby accepts PSERS' engagement, to serve as a broker and consultant for and on behalf of PSERS regarding cyber insurance, cybersecurity risks (including cybercrime, cyberattacks and data breaches), the selection, procurement, maintenance, renewal and administration of cyber insurance to protect PSERS against cybersecurity risks, and to advise on matters relating thereto, provided that the Broker shall have no authority to enter into any agreement by or on behalf of PSERS.

The Broker shall perform the following as part of the engagement:

[PLACEHOLDER FOR SPECIFIC ENGAGEMENT TASK CONSISTENT WITH RFP PROCESS]

2. Conduct of Services.

a. Following the Effective Date of this Agreement, the Broker shall proceed diligently with all Services as requested by PSERS and shall perform such Services with qualified personnel, in accordance with the completion criteria set forth in the Agreement.

b. In determining whether the Broker has performed with due diligence under this Agreement, it is agreed and understood that PSERS may measure the amount and quality of the Broker's effort against the representations made in the Broker's Proposal. The Broker's Services hereunder shall be monitored by PSERS and PSERS's designated representatives. If PSERS reasonably determines that the Broker has not performed with due diligence, PSERS and the Broker will attempt to reach agreement with respect to such matter. Failure of the PSERS or the Broker to arrive at such mutual determinations shall be a dispute concerning a question of fact within the meaning of **Section 24, Agreement Controversies**.

3. Notice of Delays. Whenever the Broker encounters any difficulty that delays or threatens to delay the timely performance of this Agreement (including actual or potential labor disputes), the Broker shall promptly give notice thereof in writing to PSERS stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by PSERS of any rights or remedies to which it is entitled by law or pursuant to provisions of this Agreement. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

4. Standard of Care. The Broker shall (a) use 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 and (b) perform in accordance with all applicable standards in the industry and all applicable laws and governmental regulations.

5. Compensation. [PLACEHOLDER FOR COMPENSATION PROVISION CONSISTENT WITH THE RFP – FIX FEE CONTRACT (ADDITIONAL AMOUNTS, IF ANY) OR ADDED BY REFERENCE TO AN EXHIBIT CONTAINING FEE TERMS]
[NOTE: ADDITIONAL BILLING AND PAYMENT PROVISIONS ARE FOUND IN THE COMMONWEALTH CONTRACT TERMS AND CONDITIONS]

6. Broker's Insurance Requirements.
(a) General. Unless otherwise indicated in the Solicitation, the Broker shall maintain at its expense and require its agents, Brokers and subcontractors to procure and maintain, as appropriate, the following types and amounts of insurance, issued by companies

acceptable to PSERS and authorized to conduct such business under the laws of the Commonwealth:

(i) Workers' Compensation Insurance for all of the Broker's employees and those of any subcontractors engaged in performing Services in accordance with the *Workers' Compensation Act*, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.

(ii) Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Agreement, whether such operation be by the Broker, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than **\$500,000** per person and **\$2,000,000** per occurrence, personal injury and property damage combined. Such policies shall be occurrence based rather than claims-made policies and shall name PSERS as an additional insured, as its interests may appear. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by PSERS as an additional insured against the insurance coverages in regard to the Services performed for PSERS.

(iii) Professional and Technology-Based Services Liability Insurance (insuring against damages and claim expenses as a result of claims arising from any actual or alleged wrongful acts in performing cyber and technology activities) in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate.

(iv) Professional Liability/Errors and Omissions Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Broker, its employees, agents, contractors, and subcontractors in the performance of all services.

(v) Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under the Broker's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of **\$5,000,000** per occurrence and **\$10,000,000** aggregate covering the Broker, its employees, agents, contractors, and subcontractors in the performance of all services, including IP infringement and privacy and data breach coverage. The Broker shall procure, and maintain the insurance described in this paragraph (a)(v) for the duration of this Agreement and for such other period of time that Broker is obligated under the Agreement to protect PSERS' confidential information and PSERS Data (as defined in this Agreement or an Exhibit thereto) and PSERS' system and services.

(vi) Completed Operations Insurance in the amount of **\$2,000,000**, per accident/occurrence/annual aggregate, covering the Broker, its employees, agents, contractors, and subcontractors in the performance of all services.

(vii) Comprehensive crime insurance in an amount of not less than **\$5,000,000** per claim.

(b) Certificate of Insurance. Prior to commencing Services under this Agreement, and annually thereafter, the Broker shall provide PSERS with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least **15 days'** prior written notice has been given to PSERS. Such cancellation or change shall not relieve the

Broker of its continuing obligation to maintain insurance coverage in accordance with this section.

(c) Insurance coverage length. The Broker agrees to maintain such insurance for the latter of the life of this Agreement, or the life of any Purchase Orders issued under this Agreement.

7. Registration. The Broker represents and warrants as of the Effective Date and during the term of this Agreement that the Broker is (a) duly registered and in good standing as [PLACEHOLDER FOR REPRESENTATION AND WARRANTY THAT BROKER MEETS ALL APPLICABLE LEGAL REQUIREMENTS TO CONDUCT ITS BUSINESS AS OF THE EFFECTIVE DATE AND DURING THE TERM OF THE AGREEMENT.] and (b) properly licensed and in good standing as an insurance broker in the Commonwealth of Pennsylvania.

8. The Broker as an Independent Contractor. The Broker shall perform its services under this Agreement as an independent contractor and not as an employee or agent of the Commonwealth of Pennsylvania or PSERS. The Broker accepts full responsibility for the payment of, and shall pay when due, premiums for workers' compensation insurance, Social Security taxes, all income tax deductions and any other taxes or payroll deductions required by law for its employees, servants, or agents who perform services specified under this Agreement. The Broker will be responsible for all Services in this Agreement whether or not Broker provides them directly. Further, the Broker is the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from this Agreement.

9. Changes in the Broker's Status. The Broker shall provide immediate written notice to PSERS of any change in the Broker's status, including, without limitation modification of business organization; material change in government or private registration, accreditation, or

licensing; material deterioration of financial condition including but not limited to the filing of a petition in bankruptcy; the Broker's awareness that its representations and warranties herein or representations and acknowledgements as provided in the Broker's Response to the RFP cease to be true; and litigation alleging the Broker's negligence or fraud.

10. Confidentiality of Reports. All reports and documents relating to PSERS prepared and delivered hereunder by the Broker shall be confidential and shall become the property of PSERS and shall not be published, circulated, or used in any manner by the Broker without PSERS' prior written approval.

11. Confidentiality, Privacy and Compliance.

(a) General. The Broker agrees to protect the confidentiality of PSERS's confidential information. PSERS agrees to protect the confidentiality of the Broker's confidential information. Unless the context otherwise clearly indicates the need for confidentiality, information is deemed confidential only when the Party claiming confidentiality designates the information as "confidential" in such a way as to give notice to the other Party (for example, notice may be communicated by describing the information, and the specifications around its use or disclosure, in the Solicitation or in the Proposal). Neither Party may assert that information owned by the other Party is such Party's confidential information. Notwithstanding the foregoing but in addition thereto, all recorded data or information, regardless of the form, the media on which it is recorded or the method of recording, provided by PSERS, or collected, processed, or created on behalf of PSERS, constitutes "confidential information" unless otherwise indicated in writing.

(b) Copying; Disclosure; Termination. The Parties agree that confidential information shall not be copied, in whole or in part, or used or disclosed except when essential

for authorized activities under this Agreement and, in the case of disclosure, where the recipient of the confidential information has agreed to be bound by confidentiality requirements no less restrictive than those set forth herein. Each copy of confidential information shall be marked by the Party making the copy with any notices appearing in the original. Upon expiration or termination of this Agreement, the receiving party shall return to the disclosing party, or certify as to the destruction of, all confidential information in the receiving party's possession, other than one copy (where permitted by law or regulation), which may be maintained for archival purposes only, and which will remain subject to this Agreement's security, privacy, data retention/destruction and confidentiality provisions. A material breach of these requirements may result in termination for default pursuant to **Subsection 22(c)**, in addition to other remedies available to the non-breaching party.

(c) Insofar as information is not otherwise protected by law or regulation, the obligations stated in this section do not apply to information:

(i) already known to the recipient at the time of disclosure other than through the contractual relationship;

(ii) independently generated by the recipient and not derived from the information supplied by the disclosing party;

(iii) known or available to the public, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the proprietary information;

(iv) disclosed to the recipient without a similar restriction by a third party who has the right to make such disclosure; or

(v) required to be disclosed by the recipient by law, regulation, court order, or other legal process.

There shall be no restriction with respect to the use or disclosure of any ideas, concepts, know-how or data processing techniques developed alone or jointly with PSERS in connection with services provided to PSERS under this Agreement.

(d) The Broker shall use the following process when submitting information to PSERS it believes to be confidential and/or proprietary information or trade secrets:

(i) Prepare and submit an un-redacted version of the appropriate document;

(ii) Prepare and submit a redacted version of the document that redacts the information that is asserted to be confidential or proprietary information or a trade secret.

The Broker shall use a redaction program that ensures the information is permanently and irreversibly redacted; and

(iii) Prepare and submit a signed written statement that identifies confidential or proprietary information or trade secrets and that states:

(1) the attached material contains confidential or proprietary information or trade secrets;

(2) the Broker is submitting the material in both redacted and un-redacted format, if possible, in accordance with 65 P.S. § 67.707(b); and

(3) the Broker is requesting that the material be considered exempt under 65 P.S. § 67.708(b)(11) from public records requests.

(e) Disclosure of Recipient or Beneficiary Information Prohibited. The Broker shall not use or disclose any information about a recipient receiving services from, or otherwise enrolled in, a PSERS program affected by or benefiting from Services under the Agreement for any purpose not connected with the Broker's responsibilities, except with consent pursuant to applicable law or regulations. All material associated with direct disclosures of this kind (including the disclosed information) shall be provided to PSERS prior to the direct disclosure.

(f) Compliance with Laws. The Broker will comply with all applicable laws or regulations related to the use and disclosure of information, including information that constitutes Protected Health Information (PHI) as defined by the *Health Insurance Portability and Accountability Act* (HIPAA) and agrees to execute such other agreements that PSERS may reasonably request in regard thereto.

(g) Additional Provisions. Additional privacy and confidentiality requirements may be specified in this Agreement.

(h) Restrictions on Use. All data and all intellectual property provided to the Broker pursuant to this Agreement or collected or generated by the Broker on behalf of PSERS pursuant to this Agreement shall be used only for the work of this Agreement. No data, intellectual property, information, or documentation may be used, disclosed, or otherwise opened for access by or to the Broker or any third party unless directly related to and necessary under the Agreement.

12. Conflict of Interest. The Broker represents, warrants and agrees that it has no interest and agrees not to acquire any interest, direct or indirect, that would conflict in any material manner or degree with the performance of its services hereunder. The Broker further

covenants that in the performance of this Agreement, it will not knowingly employ any person having any such conflicting interest.

13. Assignability. The Broker may not assign, in whole or in part, this Agreement or its rights, duties, obligations, or responsibilities hereunder without the prior written consent of PSERS, which consent may be withheld at the sole and absolute discretion of PSERS. For the purposes of this Agreement, the term “assign” shall include, but shall not be limited to, the sale, gift, assignment, encumbrance, pledge, or other transfer of any ownership interest in the Broker provided, however, that the term shall not apply to the sale or other transfer of stock of a publicly traded company. Any assignment consented to by PSERS shall be evidenced by a written assignment agreement executed by the Broker and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of this Agreement and to assume the duties, obligations, and responsibilities being assigned. A change of name by the Broker, following which the Broker’s federal identification number remains unchanged, is not considered to be an assignment. The Broker shall give PSERS written notice of any such change of name.

14. Change in Broker’s Ownership. In the event that the Broker should change ownership, PSERS shall have the exclusive option of:

- (i) continuing under the terms and conditions of this Agreement with the Broker or its successors or assigns for the full remaining term of this Agreement;
- (ii) continuing under the terms and conditions of this Agreement with the Broker or its successors or assigns for such period of time as is necessary to replace the services, products, materials, reports, studies, or computer programs; or
- (iii) immediately terminating this Agreement.

15. Subcontracts. The Broker may subcontract any portion of the Services described in this Agreement to third parties selected by the Broker and approved in writing by PSERS, whose approval shall not be unreasonably withheld. Notwithstanding the above, if the Broker has disclosed the identity of subcontractor(s) together with the scope of work to be subcontracted in its Proposal, award of this Agreement is deemed approval of all named subcontractors and a separate approval is not required. The existence of any subcontract shall not change the obligations of the Broker to PSERS under this Agreement. Upon request of PSERS, the Broker must provide PSERS with an un-redacted copy of the subcontract agreement between the Broker and the subcontractors. PSERS reserves the right, for good cause, to require that the Broker remove a subcontractor from the project. PSERS will not be responsible for any costs incurred by the Broker in replacing the subcontractor if good cause exists.

16. Other Brokers. PSERS may undertake or award other contracts for additional or related work, and the Broker shall fully cooperate with other Brokers and PSERS employees and coordinate its Services with such additional work as may be required. The Broker shall not commit or permit any act that will interfere with the performance of work by any other Broker or by PSERS employees. This section shall be included in the agreements of all Brokers with which the Broker will be required to cooperate. PSERS shall equitably enforce this section as to all Brokers to prevent the imposition of unreasonable burdens on any Broker.

17. Commonwealth Contract Terms and Conditions. The Broker shall comply with the Commonwealth Contract Terms and Conditions, attached hereto as Exhibit [], which provisions may be modified from time to time with written notice to the Broker.

18. Data and Information Security Addendum. The Broker shall comply with the Data and Information Security Addendum, attached hereto as Exhibit [].

19. Notices. Any notice, demand, direction, instruction, or other communication required or permitted under this Agreement shall be confirmed in writing and shall be sufficiently given for all purposes when sent (a) by certified or registered U.S. mail, postage prepaid, (b) by a nationally recognized courier service that maintains verification of actual delivery, (c) by e-mail, with a copy sent by first-class U.S. mail (provided that if the date of dispatch is not a working day, the email shall be deemed to have been received at the opening of business of the addressee on the next working day), or (d) by delivering the same in person to any Party at the following addresses or such other addresses as may be designated in writing from time to time by the parties:

PSERS: Beverly Hudson, Deputy Executive Director of Administration
PENNSYLVANIA PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM
5 North Fifth Street
Harrisburg, Pennsylvania 17101
Fax: (717) 772-5372
Email: behudson@pa.gov

Broker: _____

Fax: (____) _____

20. Term. The term of this Agreement shall commence on the Effective Date stated above and shall terminate five (5) years from the Effective Date, unless terminated earlier as provided herein, extended by PSERS as provided herein, or extended by mutual written consent of the parties. The Effective Date shall be fixed by PSERS after this Agreement has been fully executed by the Broker and PSERS and all approvals required by Commonwealth of Pennsylvania contracting procedures have been obtained. The Agreement shall not be a legally

binding contract until after the Effective Date is affixed and the fully executed Agreement has been sent to the Broker. The Broker shall not start performance of any work before the Effective Date, and PSERS shall not be liable to pay the Broker for any services performed or expenses incurred before the Effective Date. No employee of PSERS has the authority to verbally direct the commencement of any work under this Agreement. PSERS reserves the right, upon notice to the Broker, to extend the term of this Agreement for up to three (3) months upon the same terms and conditions.

21. Default. PSERS may, subject to the provisions of **Section 3, Notice of Delays**, and **Section 25, Force Majeure**, and in addition to its other rights under this Agreement, declare the Broker in default by written notice thereof to the Broker, and terminate (as provided in **Section 22, Termination**) the whole or any part of this Agreement for any of the following reasons:

(i) Failure to begin Services within the time specified in this Agreement or as otherwise specified;

(ii) Failure to perform the Services with sufficient labor, equipment, or material to insure the completion of the specified Services in accordance with the terms of this Agreement;

(iii) Unsatisfactory performance of the Services;

(iv) Failure to meet requirements within the time periods(s) specified in this Agreement;

(v) Failure to provide a Service that conforms with the specifications referenced in this Agreement;

(vi) Discontinuance of Services without approval;

- (vii) Failure to resume a Service, which has been discontinued, within a reasonable time after notice to do so;
- (viii) Insolvency;
- (ix) Assignment made for the benefit of creditors;
- (x) Failure or refusal, within **10 days** after written notice by the Contracting Officer, to make payment or show cause why payment should not be made, of any amounts due subcontractors for labor supplied;
- (xi) Breach of any provision of this Agreement;
- (xii) Any breach by the Broker of the security standards or procedures of this Agreement;
- (xiii) Failure to comply with representations made in the Broker's Proposal; or
- (xiv) Failure to comply with applicable industry standards, customs and practice.

22. Termination.

(a) For Convenience.

(i) PSERS may terminate this Agreement, or a Purchase Order issued against this Agreement, in whole or in part, without cause by giving Broker **30 days'** prior written notice (Notice of Termination) whenever PSERS shall determine that such termination is in the best interest of PSERS (Termination for Convenience). Any such termination shall be effected by delivery to the Broker of a Notice of Termination specifying the extent to which performance under this Agreement is terminated either in whole or in part and the date on which such termination becomes effective.

In the event of termination hereunder, the Broker shall receive payment for the following:

(1) all Services performed consistent with the terms of this Agreement before the effective date of termination;

(2) all actual and reasonable costs incurred by the Broker as a result of the termination of this Agreement; and

In no event shall the Broker be paid for any loss of anticipated profit (by the Broker or any subcontractor), loss of use of money, or administrative or overhead costs.

Failure to agree on any termination costs shall be a dispute handled in accordance with **Section 24, Agreement Controversies**, of this Agreement.

(ii) The Broker shall cease Services as of the date set forth in the Notice of Termination, and shall be paid only for such Services as have already been satisfactorily rendered up to and including the termination date set forth in said notice, or as may be otherwise provided for in said Notice of Termination, and for such Services performed during the **30-day** notice period, if such Services are requested by PSERS, for the collection, assembling, and transmitting to PSERS of at least all materials, manuals, magnetic media, studies, drawings, computations, maps, supplies, and survey notes including field books, which were obtained, prepared, or developed as part of the Services required under this Agreement.

(iii) The above shall not be deemed to limit PSERS's right to terminate this Agreement for any reason as permitted by the other provisions of this Agreement, or under applicable law.

(b) Non-Appropriation. Any payment obligation or portion thereof of PSERS created by this Agreement is conditioned upon the availability and appropriation of funds. When funds (state or federal) are not appropriated or otherwise made available to support continuation of performance or full performance in a subsequent fiscal year period, PSERS shall have the

right to terminate the Agreement in whole or in part. The Broker shall be reimbursed in the same manner as that described in subsection (a) to the extent that appropriated funds are available.

(c) Default. PSERS may, in addition to its other rights under this Agreement, terminate this Agreement in whole or in part by providing written notice of default to the Broker if the Broker materially fails to perform its obligations under this Agreement and does not cure such failure within **30 days**, or if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as PSERS may specify in the written notice specifying such failure, and diligently and continuously proceed to complete the cure. PSERS shall provide any notice of default or written cure notice for Agreement terminations.

(i) Subject to **Section 23, Limitation of Liability**, in the event PSERS terminates this Agreement in whole or in part as provided in this subsection (c), PSERS may procure services similar to those so terminated, and the Broker, in addition to liability for any liquidated damages, if any, shall be liable to PSERS for the difference between the Agreement price for the terminated portion of the Services and the actual and reasonable cost (but in no event greater than the fair market value) of producing substitute equivalent services for the terminated Services, provided that the Broker shall continue the performance of this Agreement to the extent not terminated under the provisions of this section.

(ii) Except with respect to defaults of subcontractors, the Broker shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control of the Broker. Such causes may include, but are not limited to, acts of God or of the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, work stoppages, freight embargoes, acts of terrorism and unusually severe weather. The Broker shall notify

PSERS promptly in writing of its inability to perform because of a cause beyond the control of the Broker.

(iii) Nothing in this subsection (c) shall abridge PSERS's right to suspend, debar or take other administrative action against the Broker.

(iv) If it is later determined that PSERS erred in terminating this Agreement for default, then this Agreement shall be deemed to have been terminated for convenience under subsection (a).

(v) If this Agreement is terminated as provided by this subsection (c), PSERS may, in addition to any other rights provided in this subsection (c), and applicable law and to other applicable provisions of this Agreement, require the Broker to deliver to PSERS in the manner and to the extent directed by PSERS, such documentation and other materials as the Broker has specifically produced or specifically acquired for the performance of such part of this Agreement as has been terminated.

(d) The rights and remedies of PSERS provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(e) PSERS's failure to exercise any rights or remedies provided in this section shall not be construed to be a waiver by PSERS of its rights and remedies in regard to the event of default or any succeeding event of default.

(f) Following exhaustion of the Broker's administrative remedies as set forth in **Section 24, Agreement Controversies**, the Broker's exclusive remedy shall be to seek damages in the Board of Claims.

23. Limitation of Liability.

(a) General. The Broker's liability to PSERS under this Contract shall be limited to the greater of \$250,000 or the value of this Agreement (including any amendments). This limitation will apply, except as otherwise stated in this section, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:

- (i) for bodily injury;
- (ii) for death;
- (iii) for gross negligence or intentional or willful misconduct;
- (iv) for damage to real property or tangible personal property for which the Broker is legally liable; or
- (v) under Commonwealth Contract Terms and Conditions, Section 10, Data Breach or Loss in; or

(b) The Broker will not be liable for consequential or incidental damages, except for damages as set forth in paragraphs (a)(i)—(v) above, or as otherwise specified in the Contract.

24. Agreement Controversies.

(a) Pursuant to Section 1712.1 of the *Commonwealth Procurement Code*, 62 Pa. C.S. § 1712.1, in the event of a claim arising from this Agreement or a purchase order, the Broker, within **six (6) months** after the cause of action accrues, must file a written claim with the Contracting Officer (as defined in Exhibit []) for a determination. The claim shall state all grounds upon which the Broker asserts a controversy exists. If the Broker fails to file a claim or

files an untimely claim, the Broker is deemed to have waived its right to assert a claim in any forum. At the time the claim is filed, or within **60 days** thereafter, either party may request mediation through the Commonwealth Office of General Counsel Dispute Resolution Program, <https://www.ogc.pa.gov/Services%20to%20Agencies/Mediation%20Procedures/Pages/default.aspx>.

(b) If the Broker or the Contracting Officer requests mediation, and the other party agrees, the Contracting Officer shall promptly make arrangements for mediation.

Mediation shall be scheduled so as to not delay the issuance of the final determination beyond the required **120 days** after receipt of the claim if mediation is unsuccessful. If mediation is not agreed to or if resolution is not reached through mediation, the Contracting Officer shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within **120 days** of the receipt of the claim, unless extended by consent of the Contracting Officer and the Broker. The Contracting Officer shall send his/her written determination to the Broker. If the Contracting Officer fails to issue a final determination within the **120 days** (unless extended by consent of the parties), the claim shall be deemed denied. The Contracting Officer's determination shall be the final order of the purchasing agency.

(c) Within **15 days** of the mailing date of the determination denying a claim or within **135 days** of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Broker may file a statement of claim with the Commonwealth Board of Claims.

Pending a final judicial resolution of a controversy or claim, the Broker shall proceed diligently with the performance of this Agreement or Purchase Order in a manner consistent with the

determination of the Contracting Officer and PSERS shall compensate the Broker pursuant to the terms of this Agreement or Purchase Order.

25. Force Majeure.

(a) Neither Party will incur any liability to the other if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its control and without the fault or negligence of either Party. Causes beyond a Party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

(b) The Broker shall notify the Commonwealth orally within **five (5) days** and in writing within **10 days** of the date on which the Broker becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Broker shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the Commonwealth may reasonably request. After receipt of such notification, the Commonwealth may elect to cancel the Agreement, or to extend the time for performance as reasonably necessary to compensate for the Broker's delay.

(c) In the event of a declared emergency by competent governmental authorities, the Commonwealth by notice to the Broker, may suspend all or a portion of the Agreement.

26. Applicable Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of Pennsylvania courts. The Broker consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Broker agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law. This provision may not be interpreted as a waiver or limitation of PSERS's rights or defenses.

27. Reservation of Immunities. PSERS reserves all immunities, defenses, rights, or actions arising out of its sovereign status or from the Eleventh Amendment to the United States Constitution. No provision of this Agreement shall be construed as a waiver of any such immunities, defenses, rights, or actions.

28. Binding Effect. Subject to the terms and conditions of this Agreement, this Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assigns.

29. Amendment. No amendment or modification of this Agreement shall have any force or effect unless it is in writing and signed by the Parties.

30. Counterparts. This Agreement may be executed in one or more counterparts and such execution may occur by manual signature on a copy of this Agreement physically delivered or on a copy of this Agreement transmitted as an imaged document attached to an email, or by "Electronic Signature", which is hereby defined to mean inserting an image, representation or symbol of a signature into an electronic copy of this Agreement by electronic, digital or other technological methods. Each counterpart executed in accordance with the foregoing shall be

deemed an original, with all such counterparts together constituting one and the same instrument. The exchange of executed counterparts of this Agreement or of executed signature pages to counterparts of this Agreement by an imaged document attached to an email transmission shall constitute effective execution and delivery of this Agreement and may be used for all purposes in lieu of a manually executed and physically delivered copy of this Agreement.

31. Severability. If any one or more of the covenants, agreements, provisions, or terms of this Agreement shall be held contrary to any express provision of law, or contrary to the policy of express law though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, provisions, or terms shall be deemed severable from the remaining covenants, agreements, provisions, or terms of this Agreement and shall in no way affect the validity or enforceability of the remainder of this Agreement or the rights of the parties hereto.

32. Certification of Taxpayer Identification Number. Execution of this Agreement constitutes certification by the Broker that (a) the number appearing on the signature page is the Broker's correct taxpayer identification number (or if no number is present, the Broker is awaiting a taxpayer identification number to be issued) and (b) the Broker is not subject to backup withholding because (i) the Broker is exempt from backup withholding, (ii) the Broker has not been notified by the I.R.S. that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the I.R.S. has notified the Broker that it is no longer subject to backup withholding.

33. Agreement Integration.
(a) Final contract. This Agreement constitutes the final, complete, and exclusive agreement between the parties, containing all the terms and conditions agreed to by the Parties.

- (b) Prior representations. All representations, understandings, promises, and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement.
- (c) Conditions precedent. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein.
- (d) Sole applicable terms. No contract terms or conditions are applicable to this Agreement except as they are expressly set forth herein.
- (e) Other terms unenforceable. The Broker may not require PSERS or any user of the Services acquired within the scope of this Agreement to sign, click through, or in any other way agree to any terms associated with use of or interaction with those Services, unless the PSERS has approved the terms in writing in advance under this Agreement, and the terms are consistent with this Agreement. Further, changes to terms may be accomplished only by processes set out in this Agreement; no quotations, invoices, business forms or other documentation, or terms referred to therein, shall become part of this Agreement merely by their submission to PSERS or their ordinary use in meeting the requirements of this Agreement. Any terms imposed upon the PSERS or a user in contravention of this subsection (e) must be removed at the direction of the PSERS and shall not be enforced or enforceable against PSERS or the user.

34. Exhibits. The following Exhibits are hereby incorporated by reference herein, attached hereto, and made a part of this Agreement:

- Exhibit [] - Fee Schedule [If an attachment to this Agreement]
- Exhibit [] – Commonwealth Contract Terms and Conditions
- Exhibit [] - Data and Information Security Addendum
- Exhibit [] - PSERS Request for Proposal

- Exhibit [] - Broker's Proposal

35. Rules of Construction. The following rules shall be followed in interpreting the provisions of this Agreement. The headings and captions in this Agreement are for convenience and reference purposes only and shall not be construed or deemed to explain, modify; amplify, or aid in the interpretation, constructions, or meaning of the provisions hereto. The term "Agreement" shall be deemed to include all such exhibits and schedules and any other documents expressly incorporated, by reference, into this Agreement. All words and phrases in this Agreement shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, both as the context requires. The term "include(s)" or "including" shall be deemed to mean "without limitation." Any statutory or regulation reference in this Agreement shall include a reference to any successor to such statute/regulation and/or revision thereof. The words "shall," "will," and "must" are obligatory and require performance of the stated condition, etc. during the term of this Agreement and if the context requires after the term, during such additional period to give effect to the provision. The word "may" is intended to be permissive, imparting a right, but not an obligation, to perform.

36. Survival.

Sections 10 (Confidentiality of Reports), 11 (Confidentiality, Privacy and Compliance), 17 (Commonwealth Contract Terms and Conditions), 18 (Data and Information Security Addendum), 24 (Agreement Controversies), 26 (Applicable Law) and 27 (Reservation of Immunities) and any right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, shall survive the expiration or termination of this Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties, each intending to be legally bound hereby, have caused this Insurance Brokerage and Consulting Services Agreement to be executed as of the day and year first above written.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES'
RETIREMENT SYSTEM

By: Date
Title:

By: Date
Title:

(NAME OF BROKER)_____

Federal Tax Identification Number

By: Date
Title:

[ADDITIONAL SIGNATURE PAGE FOLLOWS]

Additional Signature Page to
Insurance Brokerage and Consulting Services Agreement

APPROVED AS TO FORM AND LEGALITY:

To be obtained electronically
Office of Chief Counsel Date

To be obtained electronically
Office of Attorney General Date

APPROVED FOR FISCAL RESPONSIBILITY,
BUDGETARY APPROPRIATENESS AND
AVAILABILITY OF FUNDS:

To be obtained electronically
Comptroller Date