

Request for Proposal

PBM Auditing Services

January 2026



SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO

300 E. BROAD ST., SUITE 100 • COLUMBUS, OHIO 43215-3746
614-222-5853 • Toll-Free 800-878-5853 • www.ohsers.org

TABLE OF CONTENTS

	Page
I. Introduction	3
II. Background	3
III. Scope of Services	3
IV. Proposal Submissions	7
V. Selection Process	9
VI. Tentative Timetable	9
VII. Criteria	10
VIII. Questionnaire	10
IX. Terms and Conditions	10
Appendix A Questionnaire	12
Appendix B Covered Lives and Expenses	17
Appendix C Pricing Example	18
Appendix D Plan Terms and Conditions	22
Appendix E Business Associate Agreement	34

I. INTRODUCTION

The School Employees Retirement System of Ohio Health Care Plan and Trust (the Plan) is requesting proposals from an auditor qualified to perform audits of prescription claims processed by the administrator of the Plan's self-funded retiree prescription drug plans, currently Express Scripts, Inc. (ESI). The goal is to assess ESI's claims-paying functions and other contractual payment obligations on behalf of the Plan.

The Plan is soliciting proposals for the services of an auditor with expertise in all areas germane to prescription claims auditing ("Auditor"). Auditor must possess excellent analytical capabilities and in-depth industry knowledge and provide expert advice in connection with the audit.

II. BACKGROUND

The School Employees Retirement System of Ohio (SERS) is a statewide defined benefit retirement system for non-certificated persons employed by the public schools within the state's cities, villages and counties, as well as local districts, vocational and technical schools, community colleges, and The University of Akron. SERS provides service retirement, disability and survivor benefits, and access to health care coverage for benefit recipients and their dependents. General administration and management of the plan is vested in the Retirement Board established under [Chapter 3309](#) of the Ohio Revised Code.

Approximately 40,000 retirees, spouses and dependents are enrolled in the Plan's health care program. Most Medicare members (36,000) are enrolled in a self-funded EGWP Part D Program (PDP) through ESI. All non-Medicare members and the remaining Medicare members (approximately 2,500) are in a self-funded plan with ESI. Details on enrollment and claims costs are located in Appendix B.

For additional information on SERS, see www.ohsers.org

III. SCOPE OF SERVICES

The Plan is seeking a qualified vendor to perform an audit of prescription claims processed by ESI, the administrator of the Plan's prescription drug plan.

A. The Plan is seeking proposals for three separate audit periods. These three audits will be performed at the sole discretion of the Plan. The first audit period covers January 1, 2024 through December 31, 2025. The second and third audit periods will each cover 24 months respectively and audit: a) January 1, 2026 through December 31, 2027 and b) January 1, 2028 through December 31, 2029. Audit pricing should be completed in Appendix C for all three periods.

B. Auditor shall conduct an audit of ESI commercial and PDP pharmacy benefit

plan administration in accordance with the provisions and requirements of this RFP. In general, all requested services apply to both the commercial and PDP programs.

C. The specific objectives and audit requirements for each of the three audit periods are listed below. For the first audit, Auditor must fully describe its work plan, detailed methods, tasks and corresponding deliverables for each review category in addition to pricing in Appendix C.

1. Claims Pricing (Discount) Accuracy Review

- a. The objective of this review requires analyzing 100% of the claims incurred, over the applicable audit period, to confirm pricing accuracy.
- b. Conduct a comprehensive assessment of ESI's claims adjudication accuracy (e.g. discounts, dispensing fees, administrative fees) including:
 - (1) Request paid claims data from ESI and aggregate the discounts achieved for both brand name drugs and generic drugs, stratifying by specialty vs. non-specialty drugs.
 - (2) Determine AWP, MAC pricing, application of MAC list and specialty pharmacy pricing were accurately applied to all claims, including use of most current pricing at the time of claim.
 - (3) Request a second dataset from ESI representing a detailed claims file of all retail network pharmacy reimbursements and use it to compare the network pharmacy reimbursement amounts to the invoiced amount. Identify any claims where the discount was not passed through properly and calculate the aggregated discrepancy.
 - (4) Test a random sample of chain and independent pharmacies to ensure pharmacy-specific discounts are being appropriately passed through to the Plan.
 - (5) Review all exceptions with ESI to confirm the findings.

2. Plan Design Accuracy Review

- a. The objective of this review is to determine the accuracy of claims adjudication with respect to plan design provisions (copayments, coinsurance, quantity limits, excluding medications, prior authorizations, step therapy programs, reversed and reprocessed claims) by performing the following:

b. Analyze the claims dataset in order to validate the correct application of plan design and ensure claims were processed in accordance with the Benefit Plan Level (BPL) set-up documents. Test areas will include, but may not be limited to, copayments, coinsurance, and exclusions, as well as other cost management features such as formulary structure, quantity level limits and step therapies. Testing a sample of the results from the electronic analysis to validate findings may be an option for certain edits.

c. Review all exceptions with ESI to confirm the findings.

3. Rebate Accuracy Review

a. The objective of this review is to evaluate the accuracy of manufacturer rebates received by ESI and credited to the Plan including:

(1) Request National Drug Code (NDC) level data showing rebate amounts invoiced by ESI to manufacturers to identify the top drug manufacturers for 50% of the rebatable revenue due the Plan, to include at least the top twenty rebatable drugs. Select the rebate contracts and perform onsite review of the invoice records and rebate payments, comparing them to rebate contract terms and provisions applicable to each drug to assess the correct rebate percentages were applied, taking into account any exceptions or adjustments based on volume, rebate eligibility criteria or other applicable terms.

(2) Confirm the drug volumes invoiced for the Plan based on analysis of the claims data to ensure appropriate volumes were considered for rebate eligibility.

(3) Review rebates payable to the Plan and confirm, if applicable, that rebate guarantees submitted electronically through retail or mail service programs have/have not been achieved.

4. Drug Pricing Guarantee Review

a. The objective of this review is to determine if all pricing guarantees have been met according to the pricing schedule set forth in the agreement with ESI.

b. Review 100% of retail claims to validate that guarantees related to Brand Average Wholesale Price Discounts, Generic Effective Discounts, and Dispensing Fees have/have not been met.

c. Review 100% of mail service claims to validate that guarantees

related to Brand Average Wholesale Price Discounts, Generic Effective Discounts, and Dispensing Fees have/have not been met.

5. Annual Medicare Reconciliation

The objective of this review is to determine if the annual reconciliation meets Centers for Medicare and Medicaid Services (CMS) requirements. Review ESI's internal reconciliation processes for compliance with applicable CMS rules and regulations.

6. Medicare Pharma Revenue

The objective of this review is to determine if the Plan was provided the accurate reimbursement of plan cost based on the applicable Pharma discount (coverage gap) methodology. Review the pass through from CMS to ESI and then verify calculations for the reimbursement of plan cost presented to the Plan.

7. Medicare Review

The objective of this review is to determine the accuracy of claims adjudication with respect to applicable Medicare guidelines for: appropriateness of Part B vs. Part D coverage/plan payment, incurred Medicare fees to the Plan for Part D Late Enrollment Penalty, Low Income Cost Sharing, Low Income Subsidy, Direct Subsidy and Medicare B deductible coordination.

8. Eligibility Accuracy Review

The objective of this review is to determine if the Plan's eligibility file has been applied timely to the ESI eligibility system and reviewed for errors, omissions and data quality.

9. Quality Assurance/Internal Controls (SOC)

- a. The objective of this review is to evaluate ESI's system design and the suitability and effectiveness of internal controls and SOC reports to ensure processing integrity. Also include evaluation on issues relevant to security, availability, confidentiality and privacy.
- b. Review ESI's system design, suitability, and effectiveness of internal controls to ensure processing integrity as it relates to the PDP product and commercial product and through the organizational merger between ESI and Medco, if applicable during the time period audited.

The Plan will consider only proposals for the services as described above.
Responses submitted for other services will not be considered.

IV. PROPOSAL SUBMISSIONS

A. Intent to Respond

If the vendor intends to respond to this RFP, a Notice of Intent to do so should be sent to the Plan by February 2, 2026. The Notice should be sent by email to the contact listed in Paragraph C. below, and contain the vendor's name, its intent to respond, the name of a contact person and the contact person's telephone number, and email. Submitting this Notice will not obligate a vendor to submit a Response nor be a prerequisite for submitting a Response but will allow the Plan to send out any necessary information to interested vendors.

B. Response Deadline

The completed Response must be received by February 24, 2026 4:00 pm, **Eastern Time**. Responses received after the Response deadline will not be considered.

C. Delivery

Contact person for all responses, and communications:

Jennifer Kelley
Health Care Program Coordinator
School Employees Retirement System
300 East Broad Street, Suite 100
Columbus, OH 43215
Jkelley@ohsers.org
Telephone: 614-340-1319

An unbound original and four (4) copies of the Response are to be sent by mail or delivery service. Also send an electronic copy of the proposal and one electronic redacted copy of the proposal. Faxed transmissions are not acceptable and will not be considered.

D. Response Documents

All the following documents must be submitted together and in the order listed.

1. A Cover Letter submitting the vendor's Response on the vendor's letterhead signed by at least one individual who is authorized to bind the vendor contractually.
2. The Questionnaire in Appendix A with the question and/or request duplicated in the Response before the answer or response.

3. Review of the Plan's general terms and conditions (Appendix D) and/or if applicable, Business Associate Agreement (Appendix E).

E. Submitted Responses

Any Response submitted will become the property of the Plan. The Plan reserves the right to retain all Responses submitted, and use any information contained in a Response except as otherwise prohibited by law. SERS is a public office that is subject to Ohio Revised Code Chapter 149, known as the Ohio Public Records Law. Consequently, the vendor understands that all documents submitted in response to this RFP are considered public records and will be released when a public records request is made by news media, competitors, or other interested parties, in accordance with the law. Vendor may provide one additional copy of its response with proprietary trade secret information redacted and marked as such. If vendor contends that certain clearly marked portions of vendor's response constitute an exception to Ohio's public records law, vendor must submit vendor's legal basis in support of that assertion with vendor's response. If a public records request is made for any portion of the documents that vendor has submitted and vendor has not provided a redacted copy which clearly marked such documents as information constituting an exception to Ohio's public records law, vendor's information will be released immediately. If a public records request is made for such information and vendor has provided a redacted copy which clearly marked portions of vendor's response as information constituting an exception to Ohio's public records law, and vendor has submitted the legal basis supporting such claim, SERS will release a redacted version of vendor's information to the requester and notify vendor that a request was made and that a redacted version of vendor's response was released. Should the requester indicate that the redacted version is not sufficient for their purposes, vendor then will be immediately responsible for obtaining a court order enjoining release of vendor's clearly marked information constituting an exception to Ohio's public records law. If a public records request is made for such information and vendor has provided a redacted copy which clearly marked portions of vendor's response as information constituting an exception to Ohio's public records law, but vendor has not submitted the legal basis supporting such claim, SERS will release vendor's information to the requester and notify vendor that a request was made and that vendor's response was released. Vendor may not mark the entire response/submittal as information constituting an exception to Ohio's public records law. If vendor's entire response/submittal is so marked, the SERS will not consider vendor's response.

In the event any of the vendor's redactions are challenged, the

vendor shall have sole responsibility to defend such redactions at its cost and expense. The Plan will not institute any legal action to defend any of vendor's redactions but will notify the vendor of such challenges.

F. Communications with the Plan

Vendors which intend to submit a Response should not contact any member of the Plan's staff or members of the Retirement Board. An exception to this rule applies to vendors who currently do business with the Plan, but any contact made by such vendor(s) with people should be limited to that business and should not relate to this RFP.

G. Questions Relating to this RFP

All questions concerning this RFP must be received in writing by email by the Contact person by January 23, 2026, **4:00 p.m., Eastern Time**. Answers to only emailed questions received by this deadline will be available to all vendors by a posting at www.ohsers.org. Questions submitted after 4 p.m. January 23, 2026 or other than by email will not be considered.

V. SELECTION PROCESS

The Plan's staff will evaluate all timely and complete Responses. The Plan reserves the right to request that any Response be clarified or supplemented.

During the evaluation of proposals, the Plan may request clarifications from any Auditor under consideration and may give any Auditor the opportunity to correct defects in its proposal if the Plan believes doing so does not result in a material unfair advantage and to do so is in the best interests of the Plan.

VI. TENTATIVE TIMETABLE

The following is the tentative time schedule for the Plan's search for vendors to provide the requested services. All dates are subject to modification by the Plan without prior notice.

Issuance of RFP:	January 9, 2026
Question Deadline:	January 23, 2026
Intent to Respond:	February 2, 2026
Response to Written Questions:	February 3, 2026
RFP Response Deadline:	February 24, 2026

Projected Commencement Date: July 2026

The vendor(s) selected must enter into a contract.

VI. CRITERIA

A. The Plan will initially evaluate proposals based on the following criteria:

1. Cost, rates and project deliverables
2. Auditor's approach including project timetable, responsiveness to this proposal and work plan
3. Auditor's understanding, experience, and familiarity with projects of similar size, scope and population (non-Medicare and EGWP)
4. Qualifications and related experience of individuals assigned
5. Strength of technology, analytical tools, expertise and innovative solutions

B. The Plan, at its discretion, may request Auditors to interview and make a presentation about their proposal in Columbus, Ohio. Not all Auditors may be selected to interview and make presentations. The Plan will not pay or reimburse Auditor for any travel or other costs incurred by Auditor in connection with interviews or presentations.

C. The Plan may consider the proposals, interviews and presentations, if any and any other criteria the Plan may deem relevant in making a final selection.

VII. QUESTIONNAIRE

Vendors must complete the Questionnaire appearing in Appendix A. Responses to the questions should repeat the question and be answered in order.

IX. TERMS AND CONDITIONS

The Plan makes no representations or warranties, expressed or implied, as to the accuracy or completeness of the information in the RFP and nothing contained herein is or shall be relied upon as a promise or representation, whether as to the past or the future. The RFP does not purport to contain all the information that may be required to evaluate the RFP and any recipient hereof should conduct its own independent analysis of the Plan and the data contained or referenced herein. SERS does not anticipate updating or otherwise revising the RFP. However, this RFP may be withdrawn, modified, or re-circulated at any time at the sole discretion of the Plan.

The Plan reserves the right, at its sole discretion and without giving reasons or notice, at any time and in any respect, to alter these procedures, to change and

alter any and all criteria, to terminate discussions, to accept or reject any Response, in whole or in part, to negotiate modifications or revisions to a Response and to negotiate with any one or more respondents to the RFP.

The Plan is not and will not be under any obligation to accept, review or consider any Response to the RFP, and is not and will not be under any obligation to accept the lowest offer submitted or any offer at all. The Plan is not and will not be under any obligation to any recipient of, or any respondent to, the RFP except as expressly stated in any binding agreement ultimately entered into with one or more parties, either as part of this RFP process, or otherwise. Any decision to enter into a binding agreement with a respondent to this RFP is in the Plan's sole discretion.

This RFP is not an offer but a request to receive a Response. The Plan will consider a Response as an offer to develop an agreement based upon the contents of the Response. Respondents agree that the contents of their Responses are valid for one year from the date of submission. The Plan will not be liable for any cost incurred in the preparation of a Response and will not reimburse any respondents for their submission. Expenses related to the production of a Response are the sole responsibility of the respondent.

Appendix A

QUESTIONNAIRE

Responses to the following questions should repeat the question and be answered in order.

A. Vendor

1. Does the Auditor have a firm written code of conduct or set of standards for professional behavior? If so, attach a copy and state how they are monitored and enforced.
2. Does the Auditor have a written anti-discrimination policy? If so, attach a copy and state how the policy is monitored and enforced.
3. How does the Auditor identify and manage conflicts of interest?
4. Are there any potential conflicts of interest that the Auditor would have in providing the requested services to SERS? If yes, explain.
5. List and describe any relationships and/or contacts the Auditor or its officers or employees have had with any SERS Retirement Board member and/or staff member within the last 12 months.
6. Has the Auditor or any officer or employee given any remuneration or anything of value directly or indirectly to SERS or any of its Retirement Board members, officers, or employees? If yes, identify the recipient and remuneration or thing of value. Additional information on the Ohio ethics law in this area may be found at:
https://www.ohsers.org/wp-content/uploads/2018/09/L_2_doing_business_with_retirement_systems_in_ohio.pdf
7. Has the Auditor or any officer, principal or employee given any remuneration or anything of value such as a finder's fee, cash solicitation fee, or fee for consulting, lobbying or otherwise, in connection with this RFP? If yes, identify the recipient and remuneration or thing of value.
8. Within the last five (5) years:
 - a. Has the Auditor or any officer or employee of the firm been a defending party in a legal proceeding before a court related to the provision of services?
 - b. Has the Auditor, or any officer or employee been the subject of a governmental regulatory agency inquiry, investigation, or charge?
 - c. Has the Auditor submitted a claim to its liability insurance carrier involving the type of services sought under this RFP?
 - d. Has the Auditor had a material data breach or cyber incident involving

the unauthorized release of data.

If yes to any of the above, describe the event and the current status or resolution; include any case citation.

B. Personnel

1. Provide a list of Auditor's personnel and information related to their expertise in the following aspects of prescription claims auditing:

- Industry data and information including predictive modeling outcomes
- Plan design considerations
- Eligibility processes
- Claims processing (capabilities, accuracy, speed, staffing and infrastructure)
- Data management, integration and sharing
- Audit rights/procedures
- Coordination of benefits/recovery of over-payments
- Medicare coordination of benefits
- Claims subrogation activities
- Performance guarantees and fees-at-risk
- Claims and rebate reconciliation

2. Provide the name and hourly rate of the primary individual(s) who is/are proposed to provide services for this project and a description of how each individual(s) will be involved in the project, including an estimate of the number of hours each will devote to the project, a summary of the reasons why the individual proposed to be assigned to the project can provide the Plan with the best assistance available, and resumes for each person that describes their relevant experience and work on similar projects.

C. Work Plan

1. Provide a detailed description of Auditor's understanding of the services requested, including a description of how Auditor proposes to provide services required under each item of the Scope of Services in Section III, D, of this RFP.

2. Provide a narrative that supports why Auditor is qualified to undertake the services requested in this RFP.

3. Provide an explanation of Auditor's sampling methodology, including a description of the calculation/presentation of results and what performance measures will be calculated.

4. Provide a description of any areas or processes not included in the Scope of Services that Auditor may examine to provide more complete services on the project with the rationale for recommending these additional areas or processes.

D. Experience

1. Provide a brief description of the work product from prior contracts of Auditor that may be relevant to the scope of services proposed in this RFP, including specifically any work for a governmental entity.
2. Provide three references, two of which may represent completed projects within the last four years. References should include the name, title, telephone number, and address of each person, firm, or entity, and be available for contact.
3. Describe Auditor's experience providing auditing services to retiree groups with 40,000 or more enrollees, non-Medicare and Medicare populations, and to public entities.
4. Provide a description of the type of encryption and security procedures Auditor utilizes to secure protected health information, specifically the ability to use FTP for sending/ receiving data.
5. Provide a brief description of any current or recent projects with any of the Ohio public retirement systems.

E. Cost

1. Auditor should complete the pricing table in Appendix C for three audits. Although SERS expects to have the audits performed approximately every two years, SERS makes no guarantee to perform any audit beyond the initial audit. Indicate the sub-total cost for each Task and the total project cost. Any pricing proposals must be submitted on a not-to-exceed basis.
2. The Plan will not accept proposals that include separate charges for the upkeep and/or updating of Auditor's information technology hardware or software.
3. Hourly rates for each auditing personnel must be detailed for ad hoc and/or out-of-scope services in the table in Appendix C. These rates will be binding for the duration of the audit.
4. All travel costs and other expenses incurred by Auditor in performing the services must be included in the pricing quoted in Appendix C.
5. Any out-of-scope services performed by Auditor prior to the Plan's written consent will not be billable to the Plan.

F. Performance Guarantees

Provide any performance guarantees for your proposed services (e.g., what fees will you put at risk for your performance).

G. THE PLAN'S TERMS AND CONDITIONS

1. Does the vendor agree to all terms and conditions provided in Appendix D?
2. If not, please provide any details as to the specific provisions and vendor's preferred language.

H. BUSINESS ASSOCIATE AGREEMENT

1. Does the vendor agree to the business associate agreement provided in Appendix E?
2. If not, please provide any details as to the specific provisions and vendor's preferred language.

APPENDIX B COVERED LIVES AND EXPENSES

	Enrollees (12/31/2024)	Approximate 2024 Expenses (net of rebates)
Part D	36,507	\$130,077,000
Commercial	2,461	\$6,455,158

APPENDIX C

PRICING EXAMPLE

Task	Task Detail	Auditor(s) Responsible	Estimated Hours	Hourly Rate	Audit #1 1/24 – 12/25	Audit #2 1/26 – 12/27	Audit #3 1/28 – 12/29
CLAIMS PRICING (DISCOUNT) ACCURACY/REVIEW							
	Etc.						
	Total Task Cost:				\$	\$	\$
PLAN DESIGN ACCURACY/REVIEW							
	Etc.						
	Total Task Cost:				\$	\$	\$
REBATE ACCURACY/REVIEW							
	Etc.						
	Total Task Cost:				\$	\$	\$
DRUG PRICING GUARANTEE REVIEW							
	Etc.						
	Total Task Cost:				\$	\$	\$
ANNUAL MEDICARE RECONCILIATION							
	Etc.						
	Total Task Cost:				\$	\$	\$
MEDICARE PHARMA REVENUE (Coverage Gap)							
	Etc.						
	Total Task Cost:				\$	\$	\$
MEDICARE REVIEW							

	Etc.						
	Total Task Cost:			\$	\$	\$	
ELIGIBILITY ACCURACY/ REVIEW							
	Etc.						
	Total Task Cost:			\$	\$	\$	
QUALITY ASSURANCE/ INTERNAL CONTROLS (SOC)							
	Etc.						
	Total Task Cost:			\$	\$	\$	
DRAFT AUDIT REPORT							
	Etc.						
	Total Task Cost:			\$	\$	\$	
FINAL AUDIT REPORT							
	Etc.						
	Total Task Cost:			\$	\$	\$	
TOTAL PROJECT COST:							
	Total Cost:						
OPTIONAL							

DELIVERABLES							
Hourly Rates for Out-of-Scope Work							
Primary Auditor							\$
Other Auditor							\$
Technical personnel							\$

Appendix D

THE PLAN'S TERMS AND CONDITIONS

TERMS AND CONDITIONS

1. Acceptance and Payment.

Upon receipt by the Plan of a proper invoice from Vendor, the Plan shall pay any amounts not in dispute for Services identified in the invoice and accepted by the Plan. The Vendor shall invoice the Plan not more often than monthly. After completion of services described in a SOW, the Plan shall pay a proper, undisputed invoice not later than twenty (20) business days from the date of receipt. Other than compensation for Services set forth in this Master Agreement or SOW, there shall be no additional amounts paid by the Plan.

If billed at an hourly rate, each invoice shall provide details for all Personnel who performed Services under this Master Agreement or applicable SOW, and shall contain, at a minimum, (i) an itemized identification of the Services performed for the Plan, (ii) the dates and amount of time (in tenths of an hour increments) for each of the Services performed and (iii) the name(s) of the individual(s) performing the Services. Unless otherwise provided for in the SOW, the Vendor shall submit invoices to the Plan monthly during the term of this Master Agreement.

2. Independent Contractor

Vendor is an independent contractor, and nothing herein shall be construed to the contrary. Vendor shall not assume or create any obligations or responsibilities express or implied, on behalf of or in the name of the Plan, or bind the Plan in any manner or thing whatsoever without the Plan's written consent. The Plan shall neither have nor exercise disciplinary control or authority over Vendor. None of the employer-paid benefits provided by the Plan to its own employees, including but not limited to retirement benefits, workers' compensation insurance and unemployment insurance, are available from SERS to Vendor. Individuals who are employed by Vendor are not public employees for purposes of OPERS membership. Vendor is not a public employer for purposes of Chapter 145 of the Ohio Revised Code. Vendor agrees to pay all applicable social security taxes, unemployment compensation taxes, income taxes and contributions required by any federal, state or local law with respect to Vendor for the services under this Agreement.

3. Indemnification

- a. Vendor shall indemnify and save the Plan harmless from any and all suits, proceedings at law or in equity, claims, liabilities, costs, payments and expense including reasonable attorney fees asserted

against or incurred by the Plan, arising out of or in connection with any claim for damages to property or injuries to persons, to the extent that such damages or injuries shall have been caused by, or shall have resulted from the willful or negligent acts or omissions of Vendor's employees, Personnel, or agents, in any way related to this Master Agreement or the performance of Vendor's obligations hereunder.

- b. Vendor shall indemnify and save the Plan harmless from any and all liability, damages, losses, claims, demands, assessments, actions, causes of action, costs including reasonable attorney fees, arising out of or resulting from a reclassification or attempt to reclassify Vendor's employees or subcontractors as employees of the Plan, including without limitation any tax liability including interest and penalty resulting from the Plan's failure to pay, deduct or withhold income taxes, Federal Insurance Contribution Act taxes, or Federal Unemployment Tax Act taxes with respect to Vendor and or its employees.
- c. Vendor agrees to defend at Vendor's own cost and expense any claim or action against the Plan, its subsidiaries and/or affiliated entities, board members, officers, employees, and agents, for actual or alleged infringement of any patent, copyright or other property right (including, but not limited to, misappropriation of trade secrets) regarding any computer program, documentation, service, work and/or other materials furnished to the Plan by Vendor or Personnel providing Services. Vendor further agrees to indemnify and hold the Plan, its subsidiaries and/or affiliated entities, board members, officers, employees, and agents, harmless from and against any and all liabilities, losses, and expenses (including, but not limited to attorney's fees and court costs) associated with any such claim or action.
- d. Vendor shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed to in writing between the parties hereto. The Plan shall have the right to participate in the defense of any such claim or action, at its own expense and through counsel of the Plan's choosing. If an injunction is sought or obtained against use of any computer program, documentation or other material furnished to the Plan, Vendor shall, at its expense, either (i) procure for SERS the right to continue to use without additional cost or charge to the Plan the infringing computer program, documentation or other material as set forth in this Master Agreement, or (ii) replace or modify the infringing computer program, documentation or other material to make its use non-infringing while being capable of

performing the same function(s) while preserving the original functionality. Notwithstanding the foregoing, Vendor has no obligation for any claim based on the Plan's modification of any such computer program, documentation or other material or its combination, operation, or use with any product, data or apparatus not specified or provided by Vendor, provided that such claim solely and necessarily is based on such combination, operation or use.

4. Non-Solicitation of Employees/Liquidated Damages.

- a. Unless otherwise agreed in writing signed by both parties, neither party shall solicit the other party's personnel during the term of this Master Agreement, or for a period of one year thereafter.
- b. In the event of a breach of this provision, the breaching party shall be liable for liquidated and agreed damages since the amount of actual damages is not foreseeable, in an amount equal to the most recent annual salary paid by the non-breaching party to the subject employee. If the subject employee has been there less than one year, then the most recent salary paid will be annualized to calculate the annual salary amount. Provided however, the posting of job openings on a party's web site or through general media outlets shall not be deemed solicitation under this provision.

5. Ownership.

- a. All programs, documentation, specifications and any other technical information or work (collectively "Work") developed or prepared by Vendor or Personnel for the Plan hereunder shall be considered a work-made-for-hire under the U.S. copyright laws, and the property of the Plan. To the extent that title to any such Work may not, by operation of law, vest in the Plan for such Work, or may not be considered a work-made-for-hire, then in consideration for any payment received under this Master Agreement, Vendor hereby irrevocably assigns to the Plan all rights, title and interest therein. All such Work shall belong exclusively to the Plan, with the Plan having the right to obtain and hold in its own name copyrights, trademarks, patents, registrations, or such protection as may be appropriate to the subject matter and any extensions and renewals thereof. Vendor reserves no right or interest in the Work. Vendor agrees to give the Plan, its successors and assigns, and any person designated by the Plan, reasonable assistance, without charge to the Plan, required to perfect or secure the Plan's rights described in this paragraph. Vendor and/or Personnel shall execute, at the request of the Plan, specific assignments to the Plan of any patent, copyright or other intellectual property interests

in the Work applicable to the United States and to any and all foreign countries, as well as execute all papers and perform all lawful acts which the Plan deems necessary in connection therewith, including the giving of testimony that the Vendor retains no right or interest in the Work. This Section shall survive the termination of this Master Agreement regardless of the cause of termination.

- b. Vendor warrants that Personnel shall not cause or permit any work to include or incorporate any material in which any third party shall have registered or unregistered copyrights, patent rights, trade secrets, or other proprietary rights or interests unless the Plan is given notice prior to use of such material, the Plan gives approval, and the Vendor secures all necessary licenses which are hereby assigned to SERS for such material.

6. Confidentiality.

The Plan may disclose certain confidential, trade secret, and/or proprietary information to Vendor, its employees, subcontractors, and agents in connection with this Agreement. Vendor shall execute a Confidentiality and Non-Disclosure Agreement in the form of the attached **Exhibit A**. The signed agreements shall be provided to the Plan prior to the commencement of any work.

7. Representations and Warranties.

As of the Effective Date and at the time of execution of each SOW hereunder, the Vendor represents and warrants that it:

- a) Has the authority to enter into this Master Agreement and perform the Services provided herein.
- b) Will perform the Services in a workmanlike and professional manner consistent with all applicable statutes, regulations, or ordinances and within applicable industry best practices.
- c) Will comply with all applicable federal and state laws, including but not limited to, the laws contained in Chapter 102 of the Ohio Revised Code (Ohio ethics laws) governing ethical behavior, understands that such provisions apply to persons doing or seeking to do business with the Plan, and agrees to act in accordance with the requirements of such provisions.
- d) Maintains a non-discrimination policy and is an equal employment opportunity employer.

- e) Has not paid and will not pay, has not given and will not give, any remuneration or thing of value directly or indirectly to the Plan or any of its board members, officers, employees, or agents, or any third party in connection with obtaining or performing any of the engagements of this Master Agreement or otherwise, including, but not limited to, a finder's fee, cash solicitation fee, or a fee for consulting, lobbying or otherwise.
- f) Vendor represents that its goods and services do not infringe on any third-party copyright or ownership rights.

8. **Public Record Requests.** SERS is a public office that is subject to Ohio Revised Code Chapter 149, known as the Ohio Public Records Law. Consequently, the vendor understands that all documents submitted in response to this RFP are considered public records and will be released when a public records request is made by news media, competitors, or other interested parties, in accordance with the law. Vendor may provide one additional copy of its response with proprietary trade secret information redacted and marked as such. If vendor contends that certain clearly marked portions of vendor's response constitute an exception to Ohio's public records law, vendor must submit vendor's legal basis in support of that assertion with vendor's response. If a public records request is made for any portion of the documents that vendor has submitted and vendor has not provided a redacted copy which clearly marked such documents as information constituting an exception to Ohio's public records law, vendor's information will be released immediately. If a public records request is made for such information and vendor has provided a redacted copy which clearly marked portions of vendor's response as information constituting an exception to Ohio's public records law, and vendor has submitted the legal basis supporting such claim, SERS will release a redacted version of vendor's information to the requester and notify vendor that a request was made and that a redacted version of vendor's response was released. Should the requester indicate that the redacted version is not sufficient for their purposes, vendor then will be immediately responsible for obtaining a court order enjoining release of vendor's clearly marked information constituting an exception to Ohio's public records law. If a public records request is made for such information and vendor has provided a redacted copy which clearly marked portions of vendor's response as information constituting an exception to Ohio's public records law, but vendor has not submitted the legal basis supporting such claim, SERS will release vendor's information to the requester and notify vendor that a request was made and that vendor's response was released. Vendor may not mark the entire response/submittal as information constituting an exception to Ohio's public records law. If vendor's entire response/submittal is so marked, the SERS will not consider vendor's response.

In the event any of the vendor's redactions are challenged, the vendor shall have sole responsibility to defend such redactions at its cost and expense. The Plan will not institute any legal action to defend any of vendor's redactions but will notify the vendor of such challenges.

9. **Security and Cybersecurity Incident Notice and Reporting.** Vendor shall have policies, procedures, and System and Organization Controls report (SOC) in place for the effective management of any security or cybersecurity incidents, as defined below, which shall be made available to the Plan upon request. A "security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. A "cybersecurity incident" means a cybersecurity event that has been determined to have an impact on the vendor prompting the need for response and recovery. This may include ransomware that may place the Plan's data or the Plan members' personal data at risk. "Personal data" means full legal name, date of birth, home address, email address, social security number, driver's license number, state identification card number, the Plan account username, the Plan account password, record of contributions or financial account numbers.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to the Master Agreement, in the event of any actual security or cybersecurity incident or reasonable belief of an actual security or cybersecurity incident the Vendor either suffers or learns of that either compromises or could compromise the Plan's data, the Vendor shall notify the Plan of the following within 48 hours of its discovery:

- a) The date and time of the discovery of the security or cybersecurity incident.
- b) The name of the Vendor security or cybersecurity incident representative and contact information.

The Vendor shall provide the following information to the Plan regarding a security or cybersecurity incident within a reasonable period of time:

- a) Date and time of the security or cybersecurity incident.
- b) Nature of the security or cybersecurity incident, including any potential impact on the Plan's data or the Plan members' personal data.
- c) Description of the Plan's data or the Plan members' personal data involved in the security or cybersecurity incident, including number of members impacted.

- d) Vendor action taken to mitigate the security or cybersecurity incident, secure compromised systems, and indemnify members.

The Vendor shall cooperate with the Plan and provide such other information, including a written report, as reasonably requested by the Plan. Vendor shall analyze and document the incident and provide all notices required by all applicable laws, regulations, rules, and industry standards. The Plan may, in its sole discretion, choose to provide notice to any or all parties affected by a security or cybersecurity incident, but Vendor shall reimburse the Plan for the cost of providing such notification. Vendor further agrees to provide or reimburse the Plan for its costs in providing any credit monitoring or similar services that are necessary as a result of Vendor's security or cybersecurity incident.

In addition to any other indemnification obligations in the Master Agreement, the Vendor shall fully indemnify and save harmless the Plan from any costs, loss or damage to the Plan resulting from a security or cybersecurity incident or the unauthorized disclosure of SERS' data or the Plan members' personal data by the Vendor, its officers, agents, employees, and subcontractors.

10. Disaster Recovery and Business Continuity Requirements

The Vendor shall provide a comprehensive overview of its Disaster Recovery (DR) and Business Continuity Planning (BCP) capabilities. The response must address the following:

1. Disaster Recovery Plan Overview

Describe your organization's formal Disaster Recovery Plan.

Indicate the frequency of plan reviews and updates.

Provide the date of the most recent successful DR test.

2. Recovery Time Objectives (RTO) and Recovery Point Objectives (RPO)

Specify the RTO and RPO for the proposed solution. Describe how these objectives are achieved and maintained.

3. Data Backup and Redundancy

Detail the backup strategy, including frequency, storage locations, and encryption methods. Describe data redundancy measures and geographic diversity of data centers.

4. DR Testing and Validation

Outline the DR testing schedule and methodologies. Provide evidence of past test results or summaries demonstrating effectiveness.

11. General.

- a. The Master Agreement shall be construed and enforced in accordance with the laws of the State of Ohio and any applicable federal laws.
- b. The Master Agreement is not assignable without the prior written consent of the Plan. Any attempt by Vendor to assign any of the rights, duties, or obligations of this Master Agreement without such consent is void.
- c. The Master Agreement can only be modified by written agreement duly signed by persons authorized to sign agreements on behalf of the Plan and of Vendor.
- d. Vendor agrees that it will not, without prior written consent of the Plan, use in advertising, publicity or otherwise the name of the Plan, the Plan's logo, service marks, domain names, symbols or any affiliate of the Plan, or refer to the existence of this Master Agreement in press releases, advertising or materials distributed to prospective customers.

- e. Vendor agrees that materials prepared by the Vendor for review by SERS' Board of Trustees will be compliant with ADA Title II WCAG 2.0.

Exhibit A

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Agreement is entered into as of the _____ day of _____, 202____ (the "Effective Date"), by and between SCHOOL EMPLOYEES RETIREMENT SYSTEM OF OHIO, 300 East Broad Street, Columbus, Ohio 43215 (hereinafter referred to as "the Plan"), and _____ with its principal place of business at _____ (hereinafter referred to as "vendor.") In consideration for the exchange of the mutual covenants and promises set forth below, the parties agree as follows:

1. The parties agree that it is necessary and desirable that the Plan disclose to vendor confidential information, including but not limited to contracts and related documents and data, and other documentation or information whether or not expressly designated as confidential (collectively referred to herein as "Information").
2. The parties agree that the Information disclosed shall be used solely for the purpose of reviewing and using the Information in connection with the potential and/or actual providing of services by vendor to the Plan. No copies of the Information shall be made except to be used solely in connection with the potential and/or actual providing of services by vendor to the Plan.
3. The parties hereby acknowledge that the Information is valuable, confidential and proprietary trade secret assets and vendor agrees that it shall: (a) not communicate Information to any third party; (b) by using means no less than it uses to protect its own most valuable trade secrets, prevent inadvertent or wrongful disclosure of Information to any third party; and (c) limit internal access to employees only on a "need to know" basis for the purposes set forth in Paragraph 2 hereof.
4. Except for the purposes of Paragraph 2 above, or for any purpose the parties may hereafter agree upon in writing, vendor shall not use the Information for productive use or circulate it within its own organization, but to the extent necessary for negotiations, discussions, and consultations with its employees or authorized representatives of the Plan.

5. The obligations of confidentiality shall terminate with respect to any particular portion of the Information if:
 - a. it was in the public domain at the time of communication thereof to vendor;
 - b. it entered the public domain through no fault of vendor subsequent to the time of communication thereof;
 - c. it was in vendor's possession free of any obligation of confidence at the time of communication thereof;
 - d. it was rightfully communicated to vendor free of any obligation of confidence subsequent to the time of communication thereof; or
 - e. it was developed prior to the date of this Agreement by employees or agents of vendor independently of, and without reference to, any Information.
6. All Information, and any and all copies thereof, shall, upon written request from and at the sole discretion of the Plan, either (a) be returned to the Plan, or (b) vendor shall provide a written certification to the Plan that any and all copies of the Information provided have been destroyed.
7. Each party recognizes that the wrongful disclosure of the Information, shall give rise to irreparable injury to the Plan, inadequately compensable in damages, and that the Plan shall have, in addition to any other remedies available to it, the right to injunctive relief enjoining such wrongful disclosure by vendor.
8. This Agreement shall govern all communications between the parties during the period from the Effective Date of this Agreement to the later of (a) the date on which vendor receives written notice from the Plan that subsequent communications shall not be so governed, or (b) the termination of all agreements between the parties. However, the terms and conditions of this Agreement shall survive the termination, with or without cause, of this Agreement or any other agreement between the parties. This Agreement shall be construed in accordance with the law of the State of Ohio and any applicable federal laws.

APPENDIX E

BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") made and entered into this _____ day of _____ ("Effective Date") by and between _____ with its principal place of business at _____ ("Business Associate") and the School Employees Retirement System of Ohio with its principal place of business at 300 East Broad Street, Suite 100, Columbus, Ohio 43215 (the "Plan" or "Covered Entity") (collectively, the "Parties").

WITNESSETH:

WHEREAS, as part of its authorized activities, the School Employees Retirement System of Ohio ("the Plan") provides health care benefits to certain of its enrollees and their dependents through the Plan.

WHEREAS, The Plan has access to and maintains certain health information, including Protected Health Information, concerning persons receiving benefits through the Plan.

WHEREAS, Covered Entity has engaged Business Associate to perform the following services: _____ and other services which may include the disclosure and use of Protected Health Information by Covered Entity to Business Associate, as defined below;

WHEREAS, the Parties intend to protect the privacy of Protected Health Information disclosed to Business Associate in compliance with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as revised and supplemented by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and regulations promulgated thereunder (collectively, "HIPAA");

WHEREAS, the parties are committed to compliance with HIPAA;

WHEREAS, the purpose of this Agreement is to satisfy the obligations of Covered Entity and Business Associate under HIPAA and to ensure the security, integrity and confidentiality of Protected Health Information maintained, transmitted, disclosed, received or created by Business Associate from or on behalf of Covered Entity; and

WHEREAS, the Parties desire to enter into this Agreement to protect Protected Health Information;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the parties agree as follows:

(1) DEFINITIONS.

- (A) "Breach Notification Rule" means the requirements for Notification in the Case of Breach of unsecured Protected Health Information at 45 C.F.R. subtitle A, subchapter C, part 160 and part 164, subpart C, as they may be amended.
- (B) "Business Associate" means _____ and its subsidiaries and affiliates.
- (C) "C.F.R." means the Code of Federal Regulations, as it may be amended.
- (D) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501, which is hereby incorporated by reference. Solely for informational purposes, a "designated record set" generally includes the medical records and billing records of individuals maintained by or for a covered health care provider, the enrollment, payment, claims adjudication and case or medical management records relating to a particular Individual, as well as other Protected Health Information used, in whole or in part, by or for Covered Entity to make decisions about the individual, whether maintained by Covered Entity or a business associate. The term "record" means any item, collection or grouping of information that includes Protected Health Information.
- (E) "Disclose" or "disclose" mean release, transfer, provide access to or divulge in any other manner, information outside the entity holding the information.
- (F) "HIPAA Laws" collectively mean the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health ("HITECH") Act, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164 (the "Privacy Rule"), and the Standards for the Security of Electronic PHI, C.F.R. at Title 45, Parts 160 and 164 (the "Security Rule") as modified, supplemented, and amended from time to time.
- (G) "Individual" means the person who is the subject of the Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g), which is hereby incorporated by reference. Solely for informational purposes, a "personal representative" generally means a parent of an unemancipated minor, the executor of an individual's estate or a person with authority to act on behalf of an adult or an emancipated minor in making decisions related to health care.
- (H) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. subtitle A, subchapter C, part 160 and part 164, subparts A and E, as they may be amended. When used in relation to Business Associate, the term "Privacy Rule" shall only include those

provisions which apply directly to Business Associate pursuant to Section 13404(a) and (b) of the HITECH Act, as amended, and related guidance.

- (I) **Protected Health Information** or **“PHI”** shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, which is hereby incorporated by reference, but limited to the information created or received by Business Associate from or on behalf of Covered Entity. Solely for informational purposes, “protected health information” generally means information that directly or indirectly identifies an individual and relates to that individual’s physical or mental health or condition, provision of health care to the individual or the individual’s payment for health care.
- (J) **Required By Law** shall have the same meaning as the term “required by law” in 45 C.F.R. Sections 164.103 and 164.512(a), which are hereby incorporated by reference.
- (K) **Secretary** means the Secretary of the Department of Health and Human Services or her designee.
- (L) **Security Rule** means the Security Standards for the Protection of Electronic PHI at 45 C.F.R. subtitle A, subchapter C, part 160 and part 164, subparts A&C and Appendices, Addenda and Matrices included therein. When used in relation to Business Associate, “Security Rule” shall only include those provisions which apply directly to Business Associate pursuant to Section 13401(a) of the HITECH Act, as amended, and related guidance. Solely for information purposes, as of the date of this Agreement, those provisions include 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (documentation).
- (M) **Unsuccessful Security Incidents** mean, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, any other activities that do not result in unauthorized access as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of PHI.
- (N) **Use** or **“use”** mean, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within an entity that maintains such information.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304 and 164.501 (or any other relevant provisions of HIPAA). Any references to acts of Congress or statutory or regulatory provisions shall be deemed to include any amendments to such acts and any successor or renumbered provisions.

(2) **SCOPE.** This Agreement applies to all past, present and future agreements and relationships, whether written, oral or implied, between Covered Entity and Business Associate, pursuant to which Covered Entity provides PHI to Business Associate in any form or medium whatsoever. As of the Effective Date, this

Agreement automatically extends to and amends all existing agreements between Covered Entity and Business Associate involving the use or disclosure of PHI. In addition, this Agreement shall automatically be incorporated by reference into all subsequent agreements between Covered Entity and Business Associate involving the use or disclosure of PHI. Any conflicts or inconsistencies between the past, present and future agreements and this Agreement shall be read and resolved in favor of this Agreement.

(3) **PURPOSE.** This Agreement sets forth the terms and conditions pursuant to which PHI that is maintained, transmitted, disclosed, received or created by Business Associate from or on behalf of Covered Entity will be handled by Business Associate. All uses and disclosures not required by law, not authorized by this Agreement or not authorized by any other written agreement with Covered Entity or pursuant to Covered Entity's written instructions are prohibited.

(4) **OBLIGATIONS OF BUSINESS ASSOCIATE RELATING TO THE PRIVACY RULE.**

- (A) **Limitation on Uses, Disclosures and Requests.** Business Associate shall not use, disclose or request PHI in a manner other than as permitted or required by this Agreement or as required by law. As of the Effective Date, Business Associate shall, to the extent practicable, limit its uses of, disclosures of and requests for PHI to the minimum necessary. If Business Associate uses Artificial Intelligence, it shall not use PHI or any the Plan's data for machine learning purposes.
- (B) **Appropriate Safeguards Against Disclosures of Protected Health Information.** Business Associate shall use appropriate administrative, technical and physical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement or required by law.
- (C) **Reporting Improper Uses or Disclosures of Protected Health Information.** Business Associate shall immediately report to Covered Entity any use or disclosure of PHI of which it becomes aware that is not provided for by this Agreement.
- (D) **Mitigation.** Business Associate agrees to mitigate harmful effect that is known to Business Associate as a result of a use or disclosure of Protected Health Information by Business Associate in violation of this Agreement's requirements or that would otherwise cause a breach of unsecured Protected Health Information.
- (E) **Business Associate's Agents and Subcontractors.** Business Associate shall ensure that any agent, including a Subcontractor, to whom it provides PHI agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Furthermore, Business Associate shall enter into a written business associate agreement with such Subcontractor in accordance with HIPAA that provides that the Subcontractor has policies and procedures in place as described in 45 C.F.R. § 164.530(i) and has conducted a risk assessment that finds the safeguards of the Subcontractor are adequate

to protect the confidentiality and integrity of the PHI against potential risks and vulnerabilities. Subcontractor shall maintain an effective monitoring and assessment procedure for Subcontractors and shall assess and monitor its Subcontractors in accordance with such procedure. Business Associate shall provide copies of written business associate agreements with Subcontractors at the request of Covered Entity.

- (F) Access to Protected Health Information. Business Associate shall make available PHI in accordance with 45 C.F.R. § 164.524.
- (G) Amendments to Protected Health Information. Business Associate shall make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
- (H) Accounting of Certain Disclosures of Protected Health Information. Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528. As of the Effective Date of this Agreement, Business Associate shall use its best efforts to assist Covered Entity in discharging its obligations to provide accountings of disclosures made for treatment, payment and healthcare operations through electronic health records to the extent required by the HITECH Act. Information shall be made available, and assistance shall be provided, solely to the extent that information is available to Business Associate, a Subcontractor or the agents of either.
- (I) Governmental Access to Business Associate's Internal Practices, Books & Records. Business Associate shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. However, nothing in this Section 4(I) or any other provision of this Agreement shall constitute or be interpreted as a waiver of any legal privilege against disclosure.
- (J) Civil and Criminal Enforcement. Business Associate acknowledges that, effective on the Effective Date of this Agreement, it shall be liable under the civil and criminal enforcement provisions set forth at 42 U.S.C. § 1320d-5 and 1320d-6, as amended, for failure to comply with any of the use and disclosure requirements of this Agreement and any guidance issued by the Secretary from time to time with respect to such use and disclosure requirements.

(5) **PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BY BUSINESS ASSOCIATE.**

- (A) Generally. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide the following services to Covered Entity: _____ . Without limiting the foregoing, Business Associate may use or disclose PHI in connection with _____, provided that the use or disclosure would not violate the Privacy

Rule. In no event shall Business Associate sell PHI or market PHI in a manner inconsistent with the HITECH Act.

- (B) Management, Administration and Legal Responsibilities of Business Associate. Business Associate may use PHI for the proper management and administration of Business Associate or for carrying out its legal responsibilities. Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are required by law, or Business Associate obtains written assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by law or for the purpose for which it was disclosed to the person, and that the person will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (C) Data Aggregation. Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), which is hereby incorporated by reference. Solely for informational purposes, “data aggregation services” generally means the combination of PHI from multiple covered entities to permit the creation of data for analyses that relate to the health care operations of the respective covered entities.
- (D) De-Identified and Summary Health Information. Business Associate may use PHI to prepare de-identified information or Summary Health Information in accordance with 45 C.F.R. § 164.514(b) and 164.504(a), respectively, which are hereby incorporated by reference.
- (E) Reporting Violations of Law. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities.

(6) **OBLIGATIONS OF COVERED ENTITY RELATING TO THE PRIVACY RULE.**

- (A) Limitations in Notice of Privacy Practices. Covered Entity shall provide Business Associate with its Notice of Privacy Practices created in accordance with 45 C.F.R. § 164.520. Covered Entity shall provide Business Associate with any amendments or changes to its Notice of Privacy Practices throughout the term of this Agreement.
- (B) Changes in Permission by Individuals. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent such changes may affect Business Associate's permitted or required uses or disclosures of PHI.
- (C) Restrictions on Uses or Disclosures of Protected Health Information. Covered Entity shall notify Business Associate of any restriction on the use or disclosures of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522 to the extent that such restriction may affect Business Associate's permitted or required uses or disclosures of PHI.

(7) OBLIGATIONS OF THE BUSINESS ASSOCIATE RELATING TO THE SECURITY RULE.

- (A) Safeguards. The Business Associate shall implement administrative, physical and technical safeguards, and policies and procedures that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI. Business Associate shall maintain a comprehensive security program appropriate to the size and complexity of its operations.
- (B) Reporting Security Incidents. Business Associate shall immediately report to Covered Entity any material security incident involving electronic PHI of which it becomes aware. The parties agree that Unsuccessful Security Incidents are not material and therefore no reporting of these incidents shall be required.

(8) NOTIFICATION OF BREACH OF UNSECURED PROTECTED HEALTH INFORMATION.

- (A) Obligations of Business Associate. Business Associate shall notify Covered Entity of potential breaches of unsecured PHI held by Business Associate within two (2) business days after its discovery of the potential breaches. The Business Associate shall be responsible for any and all costs associated with the notification and mitigation of a data breach that has occurred. In the event that the Business Associate discovers a breach of unsecured PHI, the Business Associate agrees to take the following measures within ten (10) calendar days after the Business Associate discovers the breach except that the Business Associate agrees to complete the measures set forth in paragraph 4 of this subsection within the time period permitted by HIPAA:
 - 1) To notify Covered Entity of any incident involving the acquisition, access, use or disclosure of unsecured PHI in a manner not permitted under 45 C.F.R. part E. Such notice by the Business Associate shall be provided without unreasonable delay, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this provision, Business Associate must notify Covered Entity of any such incident within the above timeframe even if Business Associate has not conclusively determined within that time that the incident constitutes a breach as defined by HIPAA. For purposes of this Agreement, the Business Associate is deemed to have become aware of the breach as of the first day on which such breach is known or reasonably should have been known to such entity or associate of the Business Associate, including any person, other than the individual committing the breach, that is an employee, officer or other agent of the Business Associate or an associate of the Business Associate;

- 2) To include the names of the Individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of a breach;
- 3) To complete and submit the breach notice to Covered Entity and shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the breach; and
- 4) To provide notification of any breach of unsecured PHI of which it becomes aware in violation of this Agreement to Individuals in accordance with 45 C.F.R. § 164.404, the media (as defined under the HITECH ACT) in accordance with 45 C.F.R. § 164.406, the Secretary in accordance with 45 C.F.R. § 164.408, and/or any other parties as required under HIPAA, subject to the prior review and written approval by Covered Entity of the content of such notification.
- 5) In the event of Business Associate's use or disclosure of unsecured PHI in violation of HIPAA, Business Associate bears the burden of demonstrating that any notice as required under this Section 8 was made, including evidence demonstrating the necessity of any delay, or that the use or disclosure did not constitute a breach of unsecured PHI.

(9) **HANDLING OF “DESIGNATED RECORD SETS.”** In the event that the PHI received or created by Business Associate on behalf of Covered Entity constitutes a Designated Record Set:

- (A) Business Associate agrees, at the request of the Covered Entity or the Individual, within forty-five (45) days of receipt of such request, to incorporate any amendments to the PHI that Covered Entity directs pursuant to 45 C.F.R. §164.526 for so long as the PHI is maintained in the Designated Record Set.
- (B) Covered Entity agrees to: (i) notify Business Associate, in writing, of any PHI Covered Entity seeks to make available to an Individual pursuant to 45 C.F.R. §164.524 and the time and manner in which Business Associate shall provide such access; and (ii) notify Business Associate, in writing, of any amendments to the PHI in the possession of Business Associate that Business Associate shall make and the time and manner in which such amendments shall be made.

(10) **TERM AND TERMINATION.**

- (A) Term. This Agreement shall be effective as of the Effective Date and shall continue until terminated in accordance with the provisions of the Agreement.
- (B) Termination For Cause. Upon either Party's knowledge of a pattern of activity or practice by the other Party that constitutes a material breach or

violation of a material term of this Agreement, the non-breaching Party shall:

- 1) provide a reasonable opportunity for the breaching Party to cure the breach or end the violation, and terminate this Agreement and any underlying services agreement if the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party; or
- 2) immediately terminate this Agreement upon breach of a material term of this Agreement if cure is not possible.

(C) Effect of Termination. Upon termination of this Agreement, Business Associate shall return or deliver all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. If such return or destruction is not possible after the termination of this Agreement, Business Associate shall extend the protections of this Agreement to PHI in its possession and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(11) **INDEMNIFICATION.**

The Business Associate shall be solely responsible for, and agrees to indemnify and hold Covered Entity, and its respective employees, board members, directors, officers, agents and other members of its workforce (hereinafter the "Indemnified Party") harmless from, any and all claims, damages, causes of action, judgments, settlements, liability, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against Covered Entity or an Identified Party arising out of any acts or omissions of Business Associate or its directors, officers, employees, administrators, workforce, agents and Subcontractors relating to such persons' use of, disclosure of or request for PHI contrary to the provisions of this Agreement or HIPAA. The Business Associate shall promptly notify Covered Entity of any threatened or actual actions or claims and provide such cooperation, information and assistance as Covered Entity shall request in connection therewith. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

(12) **MISCELLANEOUS.**

(A) Regulatory References. A reference in this Agreement to a section in the Breach Notification Rule, Privacy Rule or Security Rule means the section as in effect or as amended, and for which compliance is required. Whenever a reference is made to a specific part, subpart or section of any such rule, the reference shall be deemed to include any successor part, subpart or section with the same or a similar purpose.

(B) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA.

- (C) Survival. The respective rights and obligations under this Agreement shall survive the termination of this Agreement.
- (D) Interpretation. The provisions of this Agreement shall prevail over any provisions in any applicable services agreement, or any operation activity under any such agreement, that conflicts with or is inconsistent with this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with HIPAA. Except to the extent superseded by federal law, this Agreement shall be governed by the law of the State of Ohio.
- (E) No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything contained herein confer upon any person other than the Parties and their successors and assigns, any rights, remedies, obligations or liabilities whatsoever.
- (F) Headings. The headings and subheadings used in this Agreement are for convenience only and shall not be deemed controlling in any conflict involving interpretation of this Agreement.
- (G) Separability. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions, and the Agreement shall be construed and enforced as if such provision had not been included.
- (H) Independent Contractor. Business Associate is and shall remain an independent contractor of Covered Entity under the term of this Agreement. Business Associate is not, and nothing in this Agreement shall be construed to make Business Associate, an agent, a partner or anything other than an independent contractor.
- (I) Insurance. Business Associate shall maintain at its own expense, insurance covering Business Associate for claims, losses, liabilities, judgments, settlements, lawsuits, regulatory actions, and other costs or damages arising out of its performance under this Agreement, including any negligent or otherwise wrongful acts or omissions by Business Associate or any employee thereof. This includes but is not limited to any breach of HIPAA, HITECH, the Omnibus Final Rule or any other law or regulations governing confidentiality, privacy or security of Electronic Protected Health Information. The policy or policies comprising this insurance requirement shall together provide limits of liability of at least \$10,000,000 in the aggregate. Upon Covered Entity's request, the Business Associate shall provide the Covered Entity with a copy of all certificates or verifications of insurance evidencing the existence of the insurance coverage required by this Section. Business Associate shall require the carriers for such insurance to provide, and Business Associate shall provide, the Covered Entity prior written notice of not less than 90 days of any material change in the terms of an insurance policy or the status of an insurance policy.

(J) Contacts. Any notice given pursuant to this Agreement shall be provided in writing to the respective HIPAA Contact at the addresses below:

For Covered Entity:

School Employees Retirement System of Ohio
300 East Broad Street, Suite 100
Columbus, Ohio 43215

Attention: _____

Phone: _____

Email: _____

For Business Associate:

Attention: _____

Phone: _____

Email: _____