

PERFORMANCE & RISK ANALYTICS AGREEMENT

CLIENT Teachers' Retirement System of the State of  
Kentucky (Client)

BNY Mellon Performance & Risk Analytics, LLC ("BNY Mellon")

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Gary L. Harbin, CPA  
Print Name

Wendy McCall  
Print Name

Executive Secretary  
Title

Manager - GRS  
Title

2/10/16  
Date

2-23-2014  
Date

CLIENT ADDRESS: 479 Versailles Road, Frankfort, Kentucky 40601-3800

EFFECTIVE DATE OF AGREEMENT: January 1, 2016

Intending to be legally bound hereby, Client and BNY Mellon have caused the first page of this Performance & Risk Analytics Agreement (this "Agreement") to be executed by their respective duly authorized officers as of the latest date set forth above.

**1. General:** The terms of this Agreement including all Exhibits attached hereto and documents or web pages incorporated by reference shall apply only to the Performance and Risk Analytics Services provided to Client. Client's use of an electronic delivery mechanism to access the Services (e.g. Workbench or Inform) is governed by a separate agreement with a BNY Mellon Affiliate (as defined below).

Website are incorporated into this definition by reference.

**Mutual Client:** shall mean an asset owner who is a Client of both BNY Mellon and Advisor.

**Services:** shall mean the services listed in Exhibit A to this Agreement, including component Licensed Data incorporated therein, or any other product or service of BNY Mellon received by the Client regardless of whether it is listed in Exhibit A.

**2. Definitions:** Terms used but not otherwise defined herein shall have the meanings ascribed to them on the Data Terms Website (as defined below).

**Third Party Provider:** shall mean a third party software or service provider who is not a Data Licensor whose software or service forms a part of the service.

**Advisor:** shall mean an investment manager or consultant to a Mutual Client, who is accessing the Services pursuant to an agreement with BNY Mellon, and who is receiving and utilizing the Services for the sole purpose of servicing the Mutual Client.

**3. Authorized Use:** Services are provided to Client as an End-user for Client's Internal Use. Licensed Data contained in the Services shall only be used within the Services. Client is not granted any rights or title in or to Services, or any Licensed Data contained in the Services except to the extent explicitly granted by this Agreement.

**Affiliate:** shall mean a legal person that is controlled by, controlling or under common control with the referenced organization. As provided on the Data Terms Website, for the purposes of the Internal Use restrictions contained herein, Client must be able to legally contract on behalf of and bind a legal person for it to qualify as an Affiliate of Client hereunder.

**4. Data Terms Website:** Client's use of the Services and Licensed Data shall be subject to the terms and conditions found on the Data Terms Website, which terms are incorporated by reference as though fully set forth herein. Terms on the Data Terms Website may be revised periodically by the applicable Data Licensor. Notice of such revision will be posted on the Workbench Message Centre. Client's continued use of the services constitutes client's acceptance of and agreement to the revised terms. In the event of a conflict between this Agreement and the Data Terms Website, the provisions of the Data Terms Website shall govern.

**Authorized User:** shall mean Client's Affiliate(s) listed in Exhibit A and any other person obtaining access to the Services through Client or its Affiliates.

**5. Additional Third Party Licenses:** A Data Licensor and/or Third Party Provider may require that Client enter into additional contracts directly with such Data Licensor or Third Party Provider now or in the future before receiving some Services or engaging in additional uses of Licensed Data. BNY Mellon shall have no obligation to begin and/or continue Service delivery until Client has obtained all contracts with such Data Licensor and/or Third Party Provider that may be required for Client's intended use of the Services.

**BNY Mellon Affiliate:** shall mean any direct or indirect subsidiary of The Bank of New York Mellon Corporation.

**Client Data:** shall mean information that is unique to Client, provided that Client Data will not be construed to include Proprietary Data or Licensed Data as defined on the Data Terms Website.

**6. Client Consent to use Client Data**

**Data Terms Website:** shall mean the set of terms and conditions (as may be amended by BNY Mellon from time to time) available at <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website the address of which is provided by BNY Mellon to the Client.

a. Client authorizes BNY Mellon to collect Client Data by accessing such information from the custody and accounting records of any BNY Mellon Affiliate and/or obtaining Client Data from sources specified by Client from time to time.

**End-user:** shall mean the ultimate user of a finished product.

**Internal Use:** shall mean use for the sole benefit of the Client or its Affiliates, but specifically excluding uses that benefit Client's customers unless the customer is a Mutual Client. For the avoidance of doubt, the Internal Use provisions of the Data Terms

b. Client authorizes BNY Mellon to use and to provide Client Data to Third Party Providers and Data Licensors as necessary to provide the Services to Client.

c. BNY Mellon may aggregate Client Data with other data collected and/or calculated by BNY Mellon. BNY Mellon owns all aggregated data. BNY Mellon shall not distribute the aggregated data in a format that identifies Client Data with Client.

d. The Bank of New York Mellon Corporation is a global financial organization that provides services to clients through BNY Mellon Affiliates and subsidiaries in multiple jurisdictions including BNY Mellon (the "BNY Mellon Group"). The BNY Mellon Group may centralize functions, including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, storage, compilation and analysis of client-related data, and other functions (the "Centralized Functions") in one or more BNY Mellon Affiliates, subsidiaries and third-party service providers. Solely in connection with the Centralized Functions, (i) Client consents to the disclosure of, and authorizes BNY Mellon to disclose, information regarding Client and its accounts including Client Data ("Client-Related Data") to the BNY Mellon Group and to its third-party service providers who are subject to confidentiality obligations with respect to such information and (ii) BNY Mellon may store the names and business addresses of Client's employees on the systems or in the records of the BNY Mellon Group or its service providers. Client is authorized to consent to the foregoing and confirms that the disclosure to and storage by the BNY Mellon Group of such information does not violate any relevant data protection legislation. In addition, BNY Mellon may disclose Client-Related Data as required by law or at the request of any governmental or regulatory authority.

**7. Data Consistency between BNY Mellon Affiliate and Third Party Services:** Client understands and acknowledges that: (i) pricing used to deliver the Services may not be the same as Client directed pricing utilized in BNY Mellon Affiliate provided services; and (ii) Services provided by Third Party Providers may use pricing data that is obtained from different Data Licensors than BNY Mellon and BNY Mellon Affiliates use.

**8. Fees:** Fee provisions are on Exhibit A.

#### **9. Term and Termination**

a. The Agreement shall continue as long as the Client is subscribing to at least one Service under this Agreement. In addition to the termination provisions set forth on the Data Terms Website, either party may terminate all or any portion of the Services under this Agreement on sixty (60) days notice with or without cause.

b. Upon termination of this Agreement: (i) BNY Mellon will discontinue access to Services; and (ii) Client will destroy any Licensed Data stored outside the Service reports upon request.

#### **10. Risk Apportionment**

a. The statements in Section 10 and 11 are material considerations to the agreed Fees and risk apportionment between the parties to this Agreement.

b. Client acknowledges that: (i) the Services are based on historical data and past performance does not guarantee future results; (ii) the Services contain data from numerous sources (e.g. exchanges, index providers, ratings agencies, investment managers) that do not guarantee the data accuracy and/or quality; and (iii) the Fees charged for the Services are not based on the size of the Client's portfolio and are insufficient to insure Client's overall asset value to which the Services apply.

**11. Disclaimer of Warranties:** The disclaimer of warranties set forth on the Data Terms Website is incorporated herein as though

fully set forth herein, provided that, for the purposes hereof all references to the term "Services" in the Data Terms Website shall be deemed to mean "Services" as defined in this Agreement.

#### **12. Limitation of Liability**

a. The Limitation of Liability set forth on the Data Terms Website is incorporated herein as though fully set forth herein, provided that, for the purposes hereof all references to the term "Services" in the Data Terms Website shall be deemed to mean "Services" as defined in this Agreement, and all references to the term BNY Mellon Parties shall be deemed to include Third Party Providers.

b. BNY Mellon shall not be liable for any cost, expense, loss, damage, liability or claim except those directly caused by BNY Mellon's negligence or willful misconduct.

c. Without limiting the foregoing, in no event shall the total liability to Client of BNY Mellon, the Third Party Providers and the Data Licensors, or any one or more of them, in the aggregate, arising from this Agreement based on any cause of action whatsoever, including but not limited to negligence and willful misconduct, exceed the fees actually paid for the Services by the Client to BNY Mellon during the prior twelve months preceding the claim giving rise to such liability.

#### **13. Client Indemnification and Hold Harmless Obligations:**

The Indemnification and Hold Harmless set forth on the Data Terms Website is incorporated herein as though fully set forth herein. For any matters not covered by Indemnification and Hold Harmless set forth on the Data Terms Website, Client shall indemnify, protect and hold BNY Mellon, harmless from and against all losses, liabilities, judgments, suits, actions, proceedings, claims, damages and costs, including legal fees, resulting from any claim that is attributable to: (i) use of a Service by Client, excluding claims that the Service as provided to Client and used in compliance with this Agreement violate the rights of a third party; and (ii) Client's material breach of any term in this Agreement. Section 13 of this Agreement applies only to the extent permitted by law (and BNY Mellon acknowledges that it has been advised by the Client that, in the Client's opinion, the Kentucky Constitution does not permit Client to indemnify and hold harmless BNY Mellon).

#### **14. Miscellaneous**

a. This Agreement contains the entire agreement between the parties relating to the Services and supersedes all prior written or oral communications between the parties on the subject.

b. If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable, the remaining provisions shall remain valid and enforceable, and the unenforceable provision shall be deemed to have been modified as appropriate to carry out, to the full extent possible, the intent of such provision.

c. In addition to modifications allowed under Section 4 of this Agreement (which may be made without notice to or consent from Client), this Agreement may be amended by the parties through a written notice by BNY Mellon to the Client, together with written acceptance by the Client of such amendment to this Agreement. This Agreement is not assignable by either party without the prior written consent of the other, except that: (i) BNY Mellon may assign this Agreement to any BNY Mellon Affiliate; and (ii) any entity, that shall by merger, consolidation, purchase, or otherwise, succeed to substantially all the assets or business of BNY Mellon shall, upon such succession and without any appointment or other action by the Client, be and become successor to BNY Mellon hereunder. BNY Mellon agrees to provide notice of such successor to the Client. Any proposed assignment of this Agreement by Client may be subject to the

additional licensing requirements of applicable Data Licensors. Any assignment in violation of this provision shall be void. This Agreement shall be binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

d. This Agreement is governed by and construed in accordance with the substantive laws of the State of Kentucky without regard to its choice of law provisions. The parties consent to the jurisdiction of Franklin Circuit court situated in Frankfort, Kentucky in connection with any dispute hereunder. BNY Mellon irrevocably waives any objection it may now or hereafter have to venue in such court and any claim that a proceeding brought in such court has been brought in an inconvenient forum.

e. Force Majeure: None of BNY Mellon, its Data Licensors or the Third Party Providers shall be liable if they are prevented from, or delayed in performing their obligations, or for any loss resulting from a cause that is beyond the reasonable control of that entity.

f. Survival: The following provisions shall survive termination of this Agreement: 4, 6, 8, 9, 11, 12, 13, and 14.

Exhibit A

Client Name: Teachers' Retirement System of the State of Kentucky

Client's Affiliates/Subsidiaries: None Indicated

BNY Mellon Affiliate executing Fee Schedule: The Bank of New York Mellon

BNY Mellon agrees to provide the following services to Client pursuant to the current, validly executed Fee Schedule between Client and the BNY Mellon Affiliate referenced above. The Fee Schedule and The Bank of New York Mellon Invoice shall contain the fees to be invoiced to Client for Services.

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	Service Start Date*
• Monthly Total Portfolio Performance, ACI, Sector/Country	01/01/16
• Monthly Commingled Fund Performance	01/01/16
• Monthly Total Composite Level Performance, ACI, Sector/Country	01/01/16
• Monthly Portfolio Level Analytics	01/01/16
• Monthly Composite Level Analytics	01/01/16
• Monthly Portfolio Look Thru Analytics	01/01/16
• Standard Vendors	01/01/16

\*The Service Start Date for the Annual Service will be the date used to calculate service renewal periods.

Services with fees based on a per portfolio fee will be charged to Client based on the actual services received - natural growth/terminations of managers within the Plan will be charged at the per portfolio and composite rates for the provided services.