

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into this 21st day of June by and between the DELAWARE ECONOMIC DEVELOPMENT OFFICE ("DEDO"), an agency of the State of Delaware (the "State") and Hewitt Associates LLC, 555 East Lancaster Avenue, Suite 300, Radnor, PA 19087 ("VENDOR").

WITNESSETH:

WHEREAS, DEDO desires to obtain the services of VENDOR to perform the Scope of Services, as set forth herein, in VENDOR's March 31 Proposal to Assist in the Development of a Talent Exchange submitted to the State ("Proposal"); and,

WHEREAS, VENDOR desires to provide such services to DEDO on the terms set forth in the Proposal; and,

WHEREAS, DEDO, pursuant to 29 *Del. C.* §§5003 and 5005, and VENDOR each represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement.

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

1. Services.

1.1 VENDOR shall perform for DEDO the services in the "Scope of Work" attached hereto as Exhibit A ("Scope of Work").

1.2 DEDO may at any time, request changes in the Scope of Services, which shall be documented in a change order mutually agreed upon by the parties. No services for which additional compensation may be charged by VENDOR shall be furnished without the written authorization of DEDO. When DEDO desires any addition or deletion to the Scope of Work to be provided under this Agreement, it shall notify VENDOR, who shall then submit to DEDO a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by VENDOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.3 VENDOR will not be required to make changes to the Scope of Work that result in VENDOR's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses

2.1 In consideration of the services provided for under this Agreement, DEDO agrees to pay VENDOR the fixed fee in the amount not to exceed \$250,000.00 as outlined in the Proposal on page 12 (the "Fixed Fee") and in this section of the Agreement. The Fixed Fee shall include all fees for professional services and also shall include all expense reimbursement. VENDOR shall be reimbursed only for reasonable expenses incurred by VENDOR in the performance of the Scope of Services, as authorized under all applicable laws and regulations of the State.

2.2 VENDOR shall submit invoices to DEDO on a monthly basis. DEDO agrees to pay those invoices within thirty (30) days of receipt. In the event DEDO disputes a portion of an invoice, DEDO agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide VENDOR a detailed statement of DEDO's position on the disputed portion of the invoice within thirty (30) days of receipt.

2.3 Neither DEDO nor the State shall be liable for the payment of Federal, State and Local sales, use and excise taxes, or any similar taxes including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement. At the request of VENDOR, DEDO shall provide evidence of DEDO's exemption from such taxes.

3. Term

3.1 The effective date of this Agreement shall be the date of full execution of this Agreement.

3.2 The term of this Agreement shall be from the Effective Date to completion of the Scope of Services.

4. Responsibilities of VENDOR

4.1 VENDOR (and VENDOR'S subcontractors, if any) shall be responsible for performing the services in conformance with the specifications set forth in the Scope of Work and the services shall be free from error or defect.

4.2 It shall be the duty of VENDOR to assure that VENDOR'S performance of services are in conformance with all Federal, State and Local statutes, codes, ordinances, resolutions and other regulations applicable to VENDOR. VENDOR will not produce a work product that violates or infringes on any copyright or patent rights. VENDOR shall, without additional compensation, correct or revise any errors or omissions in its work products.

4.3 Permitted or required approval by DEDO of any products or services furnished by VENDOR shall not in any way relieve VENDOR of responsibility for any errors or defects in its work. DEDO's review, approval, acceptance, or payment for any of VENDOR's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and VENDOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages caused by VENDOR's performance or failure to perform under this Agreement.

4.4 VENDOR shall be solely responsible for providing workmen's compensation and unemployment insurance for its employees, as required by law. VENDOR shall withhold and pay from the wages and other remuneration of its employees and from payments made to subcontractors or other payees all required Federal and State income taxes, OASDI and Hospitalization taxes, FUTA taxes, backup withholding or other amounts required by Federal or State law to be withheld from any such payments. VENDOR shall timely file and provide to its employees and other payees Federal and State Forms W-2, 1099 or other information returns, as required by law.

4.5 VENDOR agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. VENDOR shall comply with all Federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practices. Failure to perform under this covenant constitutes a material breach of contract.

4.6 VENDOR shall be responsible for providing liability insurance for its personnel.

4.7 VENDOR agrees to bear at its own expense, the cost of obtaining and maintaining any permits and licenses and agrees to file in a timely manner all Delaware tax returns or other required tax filings and to pay any and all taxes when due. VENDOR and all subcontractors agree to maintain during the entire term of this Agreement a valid Delaware Business License or Licenses under Part III of Title 30 of the Delaware Code and any local or municipal licenses required for VENDOR'S performance of the Scope of Work under this Agreement.

4.8 With respect to any modification of the Scope of Work to be provided hereunder and with respect to any services to be provided during any extension of the Term, VENDOR will prepare in advance a proposed itemized budget and an estimate of the total cost of the services to be provided for approval by DEDO.

4.9 VENDOR will not use DEDO's name, either express or implied, in any of its advertising or sales materials without DEDO's express written consent. Notwithstanding the foregoing, VENDOR may use DEDO's name solely for the

purpose of identifying DEDO as a client provided that VENDOR does not imply or expressly state that DEDO endorses VENDOR or VENDOR'S services.

4.10 To the extent permitted by law, all Claims (defined below) between the Parties relating to, directly or indirectly, or arising from this Agreement (including the Services), however caused, regardless of the form of action and on any theory of liability, including contract, strict liability, negligence or other tort, shall be brought under this Agreement and shall be subject to the terms of this Agreement..

5. DEDO's Responsibilities

5.1 DEDO agrees that its officers, employees or designated representatives will cooperate with VENDOR in the performance of services under this Agreement and will be available for consultation with VENDOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.2 The services performed by VENDOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by DEDO's designated representatives. DEDO representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform VENDOR by written notice before the effective date of each such delegation.

5.3 The review comments of DEDO's designated representatives may be reported in writing as needed to VENDOR. It is understood that DEDO's representatives' review comments do not relieve VENDOR from the responsibility for the professional and technical accuracy of all work delivered under this Agreement, except to the extent that an error or defect arises directly from DEDO's review comments.

5.4 DEDO shall, without charge, furnish to or make available for examination or use by VENDOR as it may request, any data which DEDO has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

5.5 VENDOR shall return any original data provided by DEDO; provided, however, VENDOR may retain a copy for archival purposes, subject to any applicable restrictions herein.

5.6 DEDO shall assist VENDOR in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 VENDOR will not be responsible for accuracy of information or data supplied by DEDO or other sources. DEDO agrees to notify VENDOR as soon as possible of any problems or errors in information or data supplied by or on behalf of DEDO. Services performed by VENDOR in correcting such problems or errors are additional services for which additional fees will be payable.

5.8 DEDO agrees not to use VENDOR's name, either express or implied, in any of its advertising or sales materials without VENDOR's express written consent.

6. Employees

6.1 VENDOR has or will retain such employees or subcontractors as it may need to perform the services required by this Agreement. Such employees or subcontractors shall not be deemed to be an agent or employee of DEDO, the State or any other political subdivision of the State.

6.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 6.2, "Personnel" includes any individual or company a party employed as a partner, member, director, employee or independent contractor and with which a party comes into direct contact in the course of the services. The foregoing restriction shall not preclude a party from soliciting or hiring any such employee who responds to general solicitations of employment not specifically targeted at such employee.

7. Independent Contractor

7.1 It is understood that in the performance of the services herein provided for, VENDOR shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. VENDOR shall be solely responsible for, and shall indemnify, defend and save the State harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

7.2 VENDOR acknowledges that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason

of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of VENDOR's and any subcontractors, agents or employees employed by VENDOR, negligent performance under this Agreement.

7.3 VENDOR acknowledges that VENDOR and any subcontractors, agents or employees employed by VENDOR shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The State will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the State or any of its officers, employees or other agents.

7.4 As an independent contractor, VENDOR has no authority to bind or commit the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

8. Workproduct; Intellectual Property; Permissions

8.1 VENDOR agrees that, except as noted below, all work products and deliverables to be provided by Vendor to DEDO in accordance with the Scope of Work (collectively, "Workproduct") are the sole and exclusive property of the State and that they shall not be used by VENDOR or by any other person or destroyed without the express written permission of DEDO. DEDO shall permit VENDOR to use Workproduct to promote VENDOR services to other VENDOR DEDOs and prospective DEDOs, provided that such use does not violate any law or contractual obligation. VENDOR agrees to execute, and to cause any of its subcontractors to execute, any and all documents reasonably requested by DEDO that are required to transfer all ownership and rights in Workproduct to the State and to cooperate with DEDO, should DEDO desire, at its own expense, to register or otherwise obtain protection under applicable federal copyright, trademark or patent laws for any Workproduct. Upon termination of this Agreement, and upon receipt by VENDOR of payment in full for services, VENDOR shall promptly turn over to DEDO all Workproduct (including work in progress, drafts or finished copy of such Workproduct) regardless of the manner or medium in which they are stored.

8.2 VENDOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by the State.

8.3 Except as otherwise provided herein, as to any work of authorship, material, device, design, process, trademark service mark or other intellectual property to be used in connection with the production of or incorporated into Workproduct or to be used otherwise in connection with its performance under

this Agreement that VENDOR does not own ("Third Party Materials"), VENDOR will, to the extent required under law, without additional charge to DEDO, obtain any and all releases, permissions, licenses or other necessary authorizations under applicable Federal or State copyright, trademark, patent or other law (collectively, "Permissions") with respect to such Third Party Materials necessary for DEDO's use of the Workproduct or services.. All such Permissions shall be granted to the State as well as to VENDOR.

8.4 VENDOR has created, acquired or otherwise has rights in, and may, in connection with the performance of Services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; software systems, user interfaces and screen designs; general purpose consulting and software tools; websites; benefit administration systems; and data, documentation, and proprietary information and processes ("VENDOR Information"). To the extent that any VENDOR Information is contained in any of the Workproducts, subject to the terms of this Agreement, VENDOR hereby grants to DEDO a paid-up, royalty-free, nonexclusive license to use such VENDOR Information solely for DEDO's internal use in connection with the Workproducts. To the extent that VENDOR utilizes any of its property, including, without limitation, the VENDOR Information, in connection with the performance of Services, such property shall remain the property of VENDOR and, except for the limited license expressly granted in this Section 8.4, DEDO shall acquire no right or interest in such property. DEDO will honor VENDOR copyrights, patents, and trademarks relating to Services, Workproducts and VENDOR Information, and will not use VENDOR's name or other intellectual property without VENDOR's prior written consent.

9. Audit; Record Access and Retention

9.1 VENDOR agrees to give DEDO, the Auditor of Accounts of the State, any private firm of certified public accountants engaged by DEDO or the Auditor of Accounts of the State, the Attorney General of the State, or any of their duly authorized employees, agents or representatives ("Auditors") access to any and all books, documents, papers and records of VENDOR that are directly pertinent to any charges invoiced by VENDOR under this Agreement and VENDOR's performance with applicable laws, for the purpose of making audits, examinations, investigations, copies, excerpts and transcriptions. Such access shall be granted by VENDOR during its normal business hours, after receipt by VENDOR of at least thirty days advance notice of a request for such access, at its offices at the address detailed in 22.1 of this Agreement, or at such other place or places agreed to by VENDOR and the requesting person. For purposes of this section, the phrase "books, documents, papers and records of VENDOR that are directly pertinent to this Agreement" shall mean books, documents, papers and records pertaining to all work performed for and job costs invoiced to DEDO, but

such phrase shall exclude general records such as payroll records and other records of VENDOR not pertaining to the work performed for, or the costs invoiced to, DEDO. VENDOR may request an Auditor to execute a non-disclosure agreement in a form reasonably acceptable to VENDOR prior to any audit conducted hereunder. To the extent permitted by applicable law, VENDOR and the Auditors shall agree in advance on the scope, timing and oversight of any audit.

9.2 VENDOR shall maintain all public records, as defined by 29 *Del. C.* §502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5.

9.3 VENDOR agrees to retain such records for a period of three (3) years following the termination of this Agreement. The provisions of this section shall survive termination or cancellation of this Agreement.

10. Confidential Information

To the extent permissible under 29 *Del. C.* §10001, *et seq.*, the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement ("Confidential Information"). Confidential Information does not include information if and to the extent such information: (i) is or becomes generally available or known to the public through no fault of the receiving party; (ii) was already known by or available to the receiving party prior to the disclosure by the disclosing party; (iii) is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; or (iv) has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement with or other obligation to the party who disclosed the information. VENDOR may use DEDO'S Confidential Information in combination with other data, including the disclosure of such information to third parties, provided that no such DEDO Confidential Information is identifiable by DEDO or a DEDO employee. In addition, either party may disclose the other party's Confidential Information to its legal counsel and auditors.

11. Warranty

11.1 VENDOR warrants that its services will be performed in accordance with the specifications set forth in the Scope of Work and free from errors or defects, a good and workmanlike manner. VENDOR agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed, not to exceed one year.

11.2 Third-party Materials within the scope of this Agreement shall be subject to the requirements of this Agreement (including warranty and indemnification rights)

12. Indemnification; Limitation on Liability

12.1 VENDOR shall hold harmless, indemnify and defend DEDO, the State and their respective officers, agents and employees (the "Indemnified Parties") from any and all losses, damages, costs, expenses, liabilities, obligations, fines, penalties, actions, judgments, suits, and causes of action, claims, demands and proceedings of any kind or description ("Claims") and all costs and expenses of any kind or nature, including, without limitation, all reasonable attorneys' fees, disbursements, court costs and any other costs of litigation related thereto arising out of, resulting from the negligence, intentional misconduct, breach of this Agreement, copyright infringement, patent infringement, trademark or service mark infringement or other violation of third party rights by VENDOR, its employees, subcontractors, or its agents. VENDOR will not hold harmless, indemnify or defend an Indemnified Party, however, if the claim of infringement results from (i) use of other than the most recent version of the Vendor Information made available to DEDO by VENDOR; (ii) DEDO's alteration of the VENDOR Information; (iii) use of any VENDOR Information in combination with other software not provided by VENDOR; or (iv) improper use of VENDOR Information in violation of this Agreement.

12.2 In case any action shall be brought against the Indemnified Parties, or any of them, based upon any of the above and in respect of which indemnity may be sought against VENDOR, the Indemnified Party or Parties shall promptly notify VENDOR in writing, and VENDOR shall assume the defense thereof, including the employment of counsel, the payment of all attorney expenses and the right to negotiate and consent to settlement with the consent of the Indemnified Party or Parties, which consent shall not be unreasonably withheld or delayed; provided, however, such consent shall not be required if the settlement includes no financial obligation for the Indemnified Party. An Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party. VENDOR shall not be liable for any settlement of any such action effected without its consent, but if any such action is settled with the consent of VENDOR, or if there be a final judgment for the plaintiff in any such action, VENDOR agrees to indemnify and does hereby hold harmless the Indemnified Parties from and against any and all loss or liability by reason of such settlement or judgment in accordance with the terms of this Agreement.

12.3 VENDOR'S liability to DEDO and the State for all Claims (regardless of whether such Claim is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise) with respect to services performed hereunder shall be limited to the total fees paid or to be paid by DEDO

for the services provided hereunder. The limitations on VENDOR'S liability contained in this Section 12.3 will not apply to Claims arising from: (i) VENDOR'S willful, fraudulent or criminal misconduct; (ii) VENDOR'S breach of the confidentiality provisions of this Agreement; (iii) bodily injury, including death, or damage to tangible personal or real property incurred while VENDOR is performing the Services and to the extent caused by the negligent or willful acts or omissions of VENDOR'S personnel or agents in performing the Services; or (iv) the infringement of the proprietary rights of a third party by use of the VENDOR Information contemplated hereunder.

12.4 In no event will either party be liable to the other party for incidental, consequential, special, or punitive damages (including loss of profits, data, business or goodwill, or government fines, penalties, taxes, or filing fees), regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose or otherwise, and even if advised of the likelihood of such damages.

12.5 The parties agree that VENDOR'S indemnity obligations are subject to DEDO'S agreement to use reasonable efforts to mitigate its own, as well as the other party's, liability, damages, and other losses suffered in connection with and arising out of this Agreement.

12.6 The provisions of this Section 12 shall survive the termination or cancellation of the Agreement.

13. Insurance

13.1 During the Term of this Agreement, VENDOR will maintain in force policies of insurance covering professional liability in the amount of \$1,000,000.00.

13.2 VENDOR shall provide thirty (30) days written notice of cancellation of any policies.

13.3 In no event shall the State be named as an additional insured on any policy required under this agreement.

14. Termination

14.1 Unless sooner terminated hereunder, this Agreement shall terminate at the end of the Term or any extension; provided however, that the provisions of this Agreement that survive this Agreement by their own terms shall continue in full force and effect.

14.2 In the event of any dispute or controversy between DEDO and VENDOR arising under this Agreement, VENDOR shall diligently continue to perform

under this Agreement pending resolution of any such dispute or controversy except in the case of non-payment of fees, in which case VENDOR may suspend services until payment is made in full for any fees then due and payable.

14.3 This Agreement may be terminated in whole or in part by either party for cause in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than fifteen (15) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

14.4 This Agreement may be terminated in whole or in part by DEDO for its convenience, but only after VENDOR is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with DEDO prior to termination.

14.5 If termination for default or convenience is effected by DEDO, DEDO will pay VENDOR that portion of the compensation which has been earned as of the effective date of termination based on the value of the services provided but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Upon termination for default or convenience, DEDO may take over the work and prosecute the same to completion by agreement with another party or otherwise.

14.6 If after termination for failure of VENDOR to fulfill contractual obligations it is determined that VENDOR has not so failed, the termination shall be deemed to have been effected for convenience.

14.7 The rights and remedies of DEDO and VENDOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

14.8 . If the consideration to be adjusted downward has already been paid, VENDOR agrees to return such consideration to DEDO on demand. All such adjustments shall be made within one year following the termination of this

Agreement. This provision shall survive termination of this Agreement for any reason.

14.9 Gratuities.

14.9.1 DEDO may, by written notice to VENDOR, terminate this Agreement if it is found after notice and hearing by DEDO that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by VENDOR or any agent or representative of VENDOR in violation of Chapter 58 of Title 29 of the Delaware code to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

14.9.2 In the event this Agreement is terminated as provided in Section 14.9.1 hereof, DEDO shall be entitled to pursue the same remedies against VENDOR it could pursue in the event of a breach of this Agreement by VENDOR.

14.9.3 The rights and remedies of DEDO provided in Section 14.9 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. Severability

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

16. Assignment; Subcontracts

16.1 Any attempt by VENDOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of DEDO shall be void. Such consent shall not be unreasonably withheld.

16.2 Services specified by this Agreement shall not be subcontracted by VENDOR, without prior written approval of DEDO.

16.3 Approval by DEDO of VENDOR's request to subcontract or acceptance of or payment for subcontracted work by DEDO shall not in any way relieve VENDOR of responsibility for the services. VENDOR shall be responsible for

the failure of all subcontractors to adhere to all applicable provisions of this Agreement.

16.4 Subject to Section 12, VENDOR shall be and remain liable for all damages caused by negligent performance or non-performance of work under this Agreement by VENDOR, its subcontractor or its sub-subcontractor.

17. Force Majeure

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

18. Non-Appropriation of Funds

18.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DEDO may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. DEDO shall immediately notify VENDOR if funds are not appropriated for the services set forth herein.

18.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DEDO's payment obligations under it shall be extinguished at the end of the fiscal year in which the State fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

19. Miscellaneous Provisions

19.1 The captions of this Agreement are inserted only for the purpose of convenient reference and shall not be construed to define, limit or prescribe the scope or intent of this Agreement or any part thereof.

19.2 In performance of this Agreement, VENDOR shall comply with all Federal, State and Local laws, ordinances, codes and regulations applicable to VENDOR in its capacity as a service provider. VENDOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.3 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any

provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.4 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.5 VENDOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. VENDOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.6 VENDOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DEDO shall have the right to annul this Agreement without liability or at its discretion deduct from the Fixed Fee or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20. Notices

20.1 All notices, reports or other written communication required or permitted hereunder shall be given in writing by certified or registered mail, return receipt requested, nationally recognized private courier (provided that written evidence of the date of delivery by such courier is available) or facsimile (provided that written evidence of the date of receipt of such facsimile transmission is available) to the addresses or facsimile telephone numbers set forth below, or to such other addresses or facsimile telephone numbers as the parties shall designate in writing, from time to time:

If to DEDO:

Delaware Economic Development Office
Attention: Director
99 Kings Highway
Dover, DE 19901

Facsimile: (302) 739-5749

If to VENDOR

Aon Hewitt
Attention: Chief Counsel
4 Overlook Point
Lincolnshire, IL 60069-4302
Telephone:
Facsimile: (847) 554-1462

With a copy to:

Mary Sales
East Region Managing Director
1650 Market Street, Suite 1000
Philadelphia, PA 19103
Telephone: (215) 255-1954
(215) 275-8896
Email: marysales@aonhewitt.com

20.2 If notice is given by United States Mail, it shall be deemed given three (3) calendar days after the post-marked date thereof, or sooner if the return receipt so indicates; if by nationally recognized private courier, on the date delivered by such nationally recognized private courier, as confirmed by written evidence of such delivery, and if by facsimile on the date transmitted to the other party.

21. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. VENDOR consents to jurisdiction venue in the State of Delaware.

22. Complete Agreement

22.1 This Agreement shall constitute the entire agreement between DEDO and VENDOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement. This Agreement has been entered into for the sole benefit of DEDO and VENDOR, and in no event will any third-party benefits or obligations be created thereby.

22.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be

enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

22.3 VENDOR may not order any product requiring a purchase order prior to DEDO's issuance of such order. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

23. Seal

The parties hereto are executing this Agreement under seal, and acknowledge that this document is made under seal for the purpose of granting each party an extended period within which to enforce the terms of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed and sealed this Agreement as of the date first above written.

WITNESS:

DELAWARE ECONOMIC
DEVELOPMENT OFFICE

Original On File

Original On File

Name: W J O O

By: _____ (SEAL.)

Name: Bernie White
Title: Director

WITNESS:

VENDOR

Original On File

Original On File

Name: Brigitte Sabatini
Administrative Asst

By: _____
Name: _____
Title: _____

EXHIBIT A – SCOPE OF WORK
TO THE PROFESSIONAL SERVICE AGREEMENT BETWEEN
DELAWARE ECONOMIC DEVELOPMENT OFFICE
AND HEWITT ASSOCIATES LLC

Risk. Reinsurance. Human Resources.

Aon Hewitt

Talent. Rewards. Performance.

Proprietary and Confidential

State of Delaware

Development of a Talent Exchange
Scope of Work

June 17, 2016

Scope of Services

The State of Delaware Economic Development Office (DEDO) seeks professional services to assist with the management of job placement strategies for individuals impacted by the downsizing of DuPont. DEDO seeks to partner with the successful vendor to analyze the worker pool and augment the process of returning workers to suitable employment.

The population of displaced workers associated with this contract is estimated at 1,700, but final population will be dependent on voluntary participation. The timeline listed below is an estimate to be confirmed during Project Mobilization phase of the project. In general, our approach is to provide assistance to DEDO by providing expertise in complex program management, technical expertise in evaluating talent and thought-partnership on how best to best match talent with individual and macro-opportunities. We will provide an agile team to complement DEDO and other State resources.

Project Step	Timeline	Scope Item From RFP	Aon Hewitt Approach	Comments
Section 1: Project Mobilization				
1.1 Project Mobilization	Week 1		Aon Hewitt will create a structure for governing the project including the establishment of formal project charters, meeting cadence, project roles, project stakeholder communications and a project plan.	The State will appoint a single point of coordination to allow for the effective management of resources across agencies and parties including DuPont.
Section 2: Data Design				
2.1 Population Estimation	Week 2-4	Estimation and analysis of impacted worker population.	Aon Hewitt will create and manage a model for estimating the impacted worker population	The State will be responsible for managing data requests to State Agencies, DuPont and any other entities.
2.2 Data Gathering Approach	Week 2-4	<p>Assistance with the development of strategies for obtaining information from population necessary to formulate subgroups, including, but not limited to:</p> <ul style="list-style-type: none"> ▪ Creation of surveys for the collection of volunteered information from displaced workers ▪ Development of a process and key factors for evaluating candidates, including design, 	<p>Aon Hewitt will give advice on the overall structure of survey data collection and the candidate experience. This includes advising the State on the overall solution, determining additional details to be gathered, and the best way to use the data gathering experience to:</p> <ul style="list-style-type: none"> ▪ Engage the population in the State programs ▪ Encourage the submission of additional data ▪ Outline the options and efforts that 	

Project Step	Timeline	Scope Item From RFP	Aon Hewitt Approach	Comments
		review and finalization of a competency evaluation tool	will emerge post-data collection	
2.3 Candidate Data Evaluation & Analysis Strategy	Week 2-4	Development of a process and key factors for evaluating candidates, including design, review and finalization of a competency evaluation tool.	Design a method of data collection that acquires needed information for assigning individuals to the job architecture while balancing the need for a short and user-friendly data collection process.	DEDO will provide insights into the limitation of data collection technology.
2.3.1 Design Data Gathering Instrument	Week 2-4	The creation of surveys for the collection of volunteered information from displaced workers.	Create a questionnaire that will allow for the collection of information that leads to deeper insights for appropriate job placement.	
2.3.2 Design Reference Data for use in Analysis & Matching	Week 2-4	Assistance with the development of strategies for obtaining information from population necessary to formulate subgroups, including, but not limited to:	<p>Aon Hewitt will give advice on the overall structure of survey data collection and the candidate experience. This includes advising the State on the overall solution, determining additional details to be gathered, and the best way to use the data gathering experience to:</p> <ul style="list-style-type: none"> ▪ Engage the population in the State programs ▪ Ask 5-15 key questions to allow for appropriate job slotting ▪ Outline the options and efforts that will emerge post-data collection 	
2.4 Technology Approach	Week 2-4	Coordination with existing State of Delaware job placement technology to assist with enhancing placement success rates, including but not limited to, Delaware Job Link.	Advise the State on how to use their existing technology assets to gather data from candidates, to house the data, and to create matching algorithms and/or data output to be used for analysis and matching.	The State will be responsible for all design and implementation of technology including addressing security, infrastructure, code development, Q/A, Testing & Release management. Aon's Project
2.5 Technology Deployment & Outreach Management	Week 5-10			This is the period of time where the State will gather information from candidates and prepare a data set for analysis by Aon.
Section 3: Opportunity Gathering				

Project Step	Timeline	Scope Item From RFP	Aon Hewitt Approach	Comments
3.1 Opportunity Gathering	Weeks 5-16	Active local and national outreach and recruitment of companies with which to work.	Aon Hewitt will provide suggestions on targeting industries and geographies based upon analyses of the population data. This work may be constrained until there is a critical mass of data collected – so that opportunities can be properly analyzed.	State of Delaware will be responsible for these activities.
Section 4: Intervention Design				
4.1 Intervention Design	Weeks 10 - 16	<p>Assists in the development of a comprehensive management strategy for response to the impacted worker population, which will include:</p> <ul style="list-style-type: none"> ▪ Developing work streams, execution plans, and identifying key personnel ▪ Provision of previously executed case studies to allow management team visibility into possible action plans ▪ Providing assistance with the coordination and organization of meetings to develop the management strategy. 	Based on general industry knowledge, Aon Hewitt will provide suggestions on alternatives and actions for placing individual and groups of candidates. This will include a strategy for prioritizing actions and organizing work streams.	
4.2 Communications Support	Weeks 10 - 16	Assistance with development of the state's communication/outreach strategy around the comprehensive management strategy.	Aon Hewitt will advise the State on communication strategy. This will include advice on creating an approach to stakeholder management, suggestions on key messages and an approach to message delivery.	The State will be responsible for drafting, editing, reviewing and distributing all communications.
4.3 Communication support - Data	Weeks 10 - 16	Provision of worker statistical findings and worker information/demographics to DEDO, other agency and/or firm which DuPont has hired for placement assistance, as directed.	Aon Hewitt will use data collected as part of their participation in the project to aid in story telling through macro-analyses of the data	The State will be responsible for managing and extracting data for use by Aon Hewitt - and will be responsible for the management and distribution of individual worker information.
4.4 General	Weeks 10 -	Identification of any additional	Aon Hewitt will provide general advise	

Project Step	Timeline	Scope Item From RFP	Aon Hewitt Approach	Comments
Strategic Advice	16	strategies that the state should pursue to enhance its efforts to promote employment opportunities for displaced workers.	to the State on the overall approach to maximizing the employment of displaced workers.	

Additional Assumptions:

- The general approach to this project assumes that Aon will be providing advice to the State. The only deliverables are those outlined in the table above, and any that are mutually agreed-upon during the project as a part of the scope. This agreement will be between Aon's Program Leaders and a representative of the DEDO.
- Aon Hewitt will not be responsible for providing any data-gathering technology
- The Aon Team will be staffed in the following manner. Bios of individual consultants are provided herein.
 - **Paul Rubenstein** – Partner and Program Advisor: Paul will provide sponsorship to the project from Aon Hewitt, and will advise the team on key strategic decisions and project approach.
 - **Paulette Welsing** – Program Leader: Paulette will be the day-to-day project leader and ensure that we are meeting timelines, that resources are applied effectively, guide teams in the coordination completion of tasks, advise the client on the tactics of completing this project, guide the development communications and drive continuity across teams and resources.
 - **Julie Caplinger** – Lead Consultant: Julie will provide primary advice on the analysis of the impacted population, data gathering, question design, job-architecture / job-family design and data analysis
 - **Mark Oshima** – Strategic Advisor Human Capital Strategies and business impacts
 - **Neil Shastri** - Data Advisor for Talent Exchange development
 - **Erin Crowe** – Communications Consultant: Erin will provide additional support to the team as needed for development of communication strategies and key messaging
 - **Virginia Bowden** – Strategic Advisor monitoring overall project success
 - **Mary Sales** – Executive Sponsor managing relationship at the senior most level
- Project resources will meet weekly for at least 30 minutes to address project plans, resource plans and to resolve issues.
- This project will last approximately 12-16 weeks. This timeline is highly dependent on task 2.4 - Technology Deployment & Outreach. Aon Hewitt assumes it will not be providing resources during this time, with the exception of a weekly check-in call. This timeline may be adjusted by mutual agreement of both parties based upon delays.

Fees

For the services outlined in the Scope of services on Page 7 of this proposal the Aon Hewitt fee is \$250,000.00. This fee assumes over the shoulder assistance for the four key components of this project:

- Project Mobilization
 - Data Design
 - Opportunity Gathering
 - Intervention Design
- Proposed fees assume a 12 – 16 week timeline and is predicated on over the shoulder consulting assistance. Our fee estimate is based on the work steps and assumptions outlined on Page 7 of this proposal.
- Our fee quote is based on 400 hours at a blended billing rate. If the consulting effort exceeds the hours assumed by 10% or more, Aon Hewitt will work with the DEDO to add to the scope and fee to the project.
- Our standard approach includes monthly invoices based on the progress of the Services and the fees for other projects you may ask us to perform. Fees and any out of pocket expenses are due within thirty days of receipt of the invoice. You will promptly notify Aon Hewitt of any questions regarding invoices expect timely payments. Interest on late payments will be assessed at nine percent per annum.
- Changes in the Services or additional projects may also be included as part of this engagement, as agreed to in writing or email by the parties. Unless otherwise set forth in such writing, our fees for other projects will be determined on a time and materials basis in accordance with Aon Hewitt billing rates when the Services are performed and the value of the Services based on the time, complexity, and the level of skill and urgency required. We can provide an estimate for larger projects upon request.
- Fee excludes travel and related living expenses and miscellaneous costs not directly allocable to each client.