STATE OF DELAWARE  
Department of Insurance  
Office of the Commissioner  

September 11, 2020

ISSUED BY: Leslie W. Ledogar, Esq.  
Regulatory Specialist  
(302) 674-7379

SUBJECT: AWARD NOTICE  
CONTRACT NO. DOI 19001- EXAM_SERVICES  
Examination Administrative Services

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Updated: 9/6/18
KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

The contractor’s contract shall be valid for a two year period beginning September 11, 2020 and ending September 12, 2023. The contract may be renewed for two one (1) year periods through negotiation between the contractor and the Delaware Department of Insurance. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

2. VENDOR

Vendor Name: Regulatory Insurance Services, Inc.
Address: 1351 West North Street Suite 201
Dover, DE  19904
Primary Contact Name: Mr. John Tinsley
Phone: (302) 678-2444
Email: John.Tinsley@delaware.gov
FSF Number: n/a

3. SHIPPING TERMS

N/A

4. DELIVERY AND PICKUP

N/A

5. PRICING, BILLING AND PAYMENT

Terms will remain firm for the term of the contract.
See billing subsection 5 under “Additional Terms and Conditions”

6. ADDITIONAL TERMS AND CONDITIONS

1. Scope of Work

1.1 RIS shall provide the services (the "Services") listed on Exhibit 2 to the DOI.

1.2 In performance of the Services, RIS is deemed an authorized representative
pursuant to 18 Del. C. § 309.

1.3 The executed Agreement, including all exhibits and any additional executed amendments and/or supplemental executed documents between the DOI and RIS shall constitute the entire contract between the DOI and RIS.

1.4 The DOI may, at any time, in writing, request changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by RIS shall be furnished without the written authorization of the DOI. Any addition, deletion, or change in the Services, and any changes in the compensation therefore, to be provided under this Agreement shall only be effectuated by a writing signed by both Parties.

2. Term of Agreement and Payment for Services and Expenses

2.1 The term of this Agreement shall be from September 11, 2020 through September 12, 2023, with two optional extensions for a period of one (1) additional year for each extension.

2.2 Delaware is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency which may become due and payable as a consequence of this Agreement.

2.3 Invoices prepared by RIS for Services provided under Exhibit 2 for submission by the DOI to third parties and the subsequent payments to RIS by the DOI shall be submitted in accordance with the procedures set forth in Exhibit 3.

2.4 Invoices prepared by RIS for Services provided under Exhibit 2 and invoiced to the DOI, shall be submitted to DOI-invoices@Delaware.gov, or as directed by the DOI. DOT payments to RIS shall be submitted in accordance with the procedures set forth in Exhibit 3.

2.5 The DOI agrees to remit any payments in accordance with the procedures set forth in Exhibit 3. If payments to RIS are not remitted in accordance with the procedures set forth in Exhibit 3, RJS may suspend the Services, including all examinations then in progress.

3. Responsibilities of RIS

3.1 At the direction of the DOI and in accordance with NAIC accreditation guidelines, RIS shall be responsible for the oversight of the DOI’s contract examiners in performance of their work on behalf of the DOI.
3.2 RIS shall be responsible for providing any necessary IT servers (the "RIS Server"), separate from all servers maintained by the DOI and the Delaware Department of Technology and Information ("DTI") for all work product for the DOI's exams and financial analysis. RIS shall be responsible for ensuring that the RIS Server complies with the standards promulgated by the DTI published at http://dti.delaware.gov/ and as modified from time to time by DTJ during the term of this Agreement. RIS is only responsible for ensuring the server complies with standards published at the above site or any additional standards, provided such additional standards are communicated to R1S in writing by the DOI. All costs associated with this server, including maintenance, upgrades, replacements, modifications, the cost of appropriate insurance, and any costs for DTI compliance and any necessary training of personnel, shall be borne 90% by the DOI and 10% by RIS. These costs shall be invoiced and paid as set forth in Exhibit 3. RIS’s liability with regard to any security breaches or other issues regarding the RIS Server shall be strictly limited to what is covered by the limits of RIS's cybersecurity insurance policy with regard to type and amount of liability. The DOI agrees that it shall not seek any damages that exceed the limits of or is not covered by RIS's cybersecurity insurance policy, a copy of which has been provided to the DOI. The DOI acknowledges and agrees that RIS may maintain RIS documents and data on the RIS server which are not included as part of the Deliverables, including, but not limited to, RIS personnel information, payroll, bank information, and tax information.

3.3 Except as set forth in Paragraph 7 below, RIS shall be responsible for the professional quality, technical accuracy, and coordination of all Services furnished by RIS, its subcontractors and their principals, officers, employees and agents under this Agreement. In performing the Services, RIS shall follow practices consistent with generally accepted professional and technical standards, including but not limited to the standards of the National Association of Insurance Commissioners (the "NAIC"), as directed by the DOI.

3.4 It shall be the duty of RIS to assure that all the Services provided hereunder are technically sound and in conformance with all pertinent Federal, State and local statutes, codes, ordinances, resolutions and other regulations. RIS shall not provide Services that violate or infringe on any copyright or patent rights. RIS shall correct or revise any Services provided hereunder that are not in conformance with all pertinent Federal, State, and local statutes, codes, ordinances, resolutions, or other regulations.

3.5 Permitted or required approval by the DOI of the Services provided by RIS shall not in any way relieve RIS of responsibility for the professional and technical accuracy and adequacy of its work. The DOI's review, approval, acceptance, or payment for any of the 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 RIS shall be and remains liable in accordance with the terms of this Agreement and
applicable Jaw (subject to Section 8.3 of this Agreement) for all damages incurred by the DOI caused by RIS's performance or failure to perform under this Agreement.

3.6 The parties shall follow the procedures set forth in the Section 8 in the event of any claim for actual damages hereunder. In no event shall the DOI withhold or offset any contested amounts from uncontested payments owed to RIS.

4. The DOI’s Responsibilities

4.1 In connection with RIS's provision of the Services, the DOI shall perform those tasks and fulfill those responsibilities specified in Exhibits 2, 2A and 3 to this Agreement.

4.2 The DOI agrees that its officers and employees will cooperate with RIS in the performance of Services under this Agreement and will communicate as needed with RIS at such reasonable times with advance notice as to not conflict with their other responsibilities.

4.3 The Services performed by RIS under this Agreement may be subject to review for compliance with the terms of this Agreement by the DOI's designated representatives. A copy of any report or review comments prepared by the DOI's designated representatives must be provided to RIS and RIS must be given an opportunity to respond to the report or comments in writing.

4.4 The DOI shall, without charge, furnish to or make available for examination or use by RIS as it may request, any data which the DOI has available, including as examples only and not as a limitation: (a) copies of reports, surveys, records, and other pertinent documents; and (b) copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

4.5 The DOI shall approve exam warrants for financial and market conduct examinations expeditiously so as not to delay the provision of the Services by RIS.

4.6 The DOI agrees to remit any payments received from insurer(s) or insurance organizations for examination charges and expenses incurred by RIS or other charges for Services rendered under this Agreement to RIS as set forth in Exhibit 3.

5. RIS Services

5.1 RIS shall maintain all work papers and documentation in accordance with standard practices. RIS shall obtain written approval from the DOI before destroying any work papers or documentation.

5.2 Except as otherwise set forth herein, all deliverables developed, prepared, completed or acquired by RIS for the DOI relating to the Services, if any (the
"Deliverables" shall become the property of the DOI and shall be delivered to the DOI's designated representative from time to time as requested by the DOI, but in any event no later than either the expiration or earlier termination of this Agreement.

5.3 To the extent any exist, RIS shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs which have been previously developed by RIS or developed during the course of the provision of the Services, provided that such generic documents or templates do not contain any DOI confidential information or proprietary data (the "Consultant Tools"). Rights and ownership by RIS shall not extend to or include all or any part of the DOI's proprietary data or DOI confidential information. To the extent that RIS may include in the Deliverables any Consultant Tools, RIS agrees that the DOI shall be deemed to have a fully paid up license to make copies of the Consultant Tools as part of its use of the Deliverables for its internal business purposes and provided that such Consultant Tools cannot be modified or distributed outside the DOI without the written permission of RIS, except as otherwise permitted herein. For the sake of clarity, this clause shall not apply to Deliverables designed specifically for DOI. The parties acknowledge that the Services generally are comprised of professional analysis and actuarial services relating to insurance companies in the State of Delaware and that the parties do not anticipate any new intellectual property being developed as part of the Services.

5.4 The Deliverables are prepared solely for the use and benefit of the DOI in accordance with its statutory and regulatory requirements. RIS recognizes that the Deliverables may be public records subject to disclosure to third parties, however, RIS does not intend to benefit and assumes no duty or liability to any third parties who receive the Deliverables and may include disclaimer language on the Deliverables so stating. RIS shall not be liable for damages, claims and losses arising out of any reuse of the Deliverables on any other project conducted by the DOI. The DOI shall have the right to reproduce all documentation supplied pursuant to this Agreement without the express written permission of RIS if required by applicable law, including but not limited to the Delaware Freedom of Information Act, or authorized representatives of other Delaware state agencies. RIS retains all title and interest to any data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with the DOI's rights to the materials, information and documents developed in performing the Services. The DOI shall have a perpetual, nontransferable, non-exclusive paid- up right and license to use, copy, modify and prepare derivative works of all materials in which RIS retains title, whether individually by RIS or jointly with the DOI, provided that this clause shall not apply to any
business record, proprietary data, or confidential information belonging to RIS. Any and all source code developed in connection with the Services, if any, will be provided to the DOI, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

5.5 In no event shall RIS be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, RIS shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the Services.

6. Confidential Information

To the extent permissible under 29 Del. C. § 1000 I, et seq., (the "Delaware Freedom of Information Act"), 18 Del. C. §321(g) or any other applicable state or federal law, RIS shall preserve in confidence any information, reports, working papers, or documents obtained, assembled or prepared in connection with the performance of the Services under this Agreement. The confidentiality obligations of RIS set forth above shall not apply to any information of the DOI which: (i) was in the public domain at the time of the DOI's communication thereof to RIS; enters the public domain through no breach of this provision subsequent to the time of the DOI's communication thereof to RIS; (iii) was in RIS's possession free of any obligation of confidentiality at the time of the DOI's communication thereof to RIS; (iv) is developed by RIS without reference to the information of the DOI; or (v) is required by law or regulation to be disclosed.

7. Warranty

7.1 RIS warrants that the Services will be performed in accordance with professional standards generally applicable to each professional service being provided as part of the Services.

7.2 RIS agrees that any Services that do not meet the generally applicable professional standards, as determined by the licensing entity governing each profession, will be re-performed in order to bring them into compliance with generally applicable professional standards.

7.3 Third-party equipment, including the servers utilized by RIS and work product produced by examiners retained by the DOI, are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed and RIS shall not be responsible for ensuring their compliance with such warranties. With respect to all third-party products
and services purchased by RIS for the DOI in connection with the provision of the Services, RIS shall pass through or assign to the DOI the rights RIS obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

8. **Indemnification and Limitation of Liability**

8.1 **Notwithstanding** anything in this Agreement to the contrary but subject to the limitation provided in Section 8.3 below, RIS shall indemnify and hold harmless the DOI, its agents and employees from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the gross negligence or intentionally wrongful conduct of RIS, its agents or employees during the performance of Services hereunder, or (B) RIS's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that RIS shall have been notified promptly in writing by Delaware of any notice of such claim.

8.2 If the DOI promptly notifies RIS in writing of a third party claim against the DOI and/or Delaware that any of the Services or deliverable infringes on a copyright or a trade secret of any third party, subject to the limitation provided in Section 8.3 below, RIS will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the DOI and/or Delaware. RIS will not indemnify Delaware, however, if the claim of infringement is caused by the DOI and/or Delaware's misuse or modification of the Services or any Deliverable provided hereunder.

8.3 Delaware agrees that RIS's total liability to the DOI for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including, but not limited to contract liability or RIS's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate exceed the amount of RIS's professional liability insurance.

8.4 RIS's obligations to indemnify Delaware as set forth in this Section shall survive the completion or termination of this Agreement.

8.5 The provisions of 18 Del. C. § 330(b) shall apply to RIS, and its agents, employees, and subcontractors providing Services under this Agreement.

8.6 RIS warrants that all elements of the Services, including, if any, all equipment, software, documentation, Services and Deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by
any third party against the DOI or Delaware, Delaware shall promptly notify RIS in writing and, subject to the procedures set forth in Section 8, including the limitation of liability provided in Section 8.3, RIS shall defend such claim, suit or action at RIS’ s expense. RIS shall indemnify Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services, products or other intellectual property used or furnished by RIS (collectively, the "Products") is or in RIS’ s reasonable judgment is likely to be, held to constitute an infringing product, RIS shall either: (i) procure the right for the DOI or Delaware to continue using the Product(s); (ii) replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or (iii) modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the contract, or only alters the Product(s) to a degree that Delaware agrees to and accepts in writing. Any costs associated with the Products, as set forth in this Section, shall be borne 90% by the DOI and 10% by RIS. RIS is not responsible for renewing any licenses after the termination of this Agreement.

9. Employees

9.1 RIS shall not have the right to subcontract without the prior written consent of the DOI which consent shall not be unreasonably withheld.

9.2 Except as the other party expressly authorizes in writing in advance, neither RIS nor the DOI 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, "Personnel" includes any individual or company a party employs as a partner, member, employee or independent contractor and with which a party comes into direct contact in the course of the Services. The provisions of this Section do not restrict the right of either party to solicit or recruit generally in the media and do not prohibit either party from hiring Personnel of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring party.

9.3 RIS has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the DOI or Delaware.
10. **Independent Contractor**

10.1 It is understood that in the performance of the Services, RJS shall be, and is, an independent contractor, and is not an agent or employee of the DOI and shall furnish the Services in its own manner except as required by this Agreement. RJS shall be solely responsible for, and shall indemnify, defend and hold the DOI 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.

10.2 RJS acknowledges that RJS and any subcontractors, agents or employees employed by RJS shall not, under any circumstances be considered employees of the DOI and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, 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 DOI will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of RJS or any of its officers, employees or other agents.

10.3 Nothing herein shall be deemed or construed to create a joint venture, partnership, or agency relationship between the Parties for any purpose.

10.4 RJS agrees that any individual or group of temporary staff person(s) provided to the DOI pursuant to this Agreement, other than separately retained DOI contract examiners, shall remain the employee(s) of RJS for all purposes including any required compliance with the Affordable Care Act (ACA) by RJS. RJS agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the DOI pursuant to this Agreement must be provided any benefits, including any healthcare benefits by Delaware and RJS agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the ACA to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to Delaware pursuant to this Agreement, RJS agrees to hold harmless, indemnify, and defend the DOI and Delaware to the maximum extent of any liability to Delaware arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Agreement, the aforementioned obligations to hold harmless, indemnify, and defend Delaware shall cease and terminate
for the period following the date of hire. Nothing herein shall be deemed to terminate RIS's obligation to hold harmless, indemnify, and defend Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by Delaware.

10.5 RIS shall be responsible for providing professional liability insurance for its personnel.

11. Dispute Resolution

11.1 The parties agree that they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties.

11.2 If the matter is not resolved by negotiation, as outlined above, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator jointly selected by the DOI and RIS. In the event the DOI and RIS are not able to jointly agree on a mediator, each of them shall select a mediator and each of those mediators shall jointly select a third mediator, who shall mediate the dispute. If the matter is not resolved through mediation, then any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial (or other) Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The arbitrator shall be jointly selected by the DOI and RIS. In the event the DOI and RIS are not able to jointly agree on an arbitrator, each of them shall select an arbitrator and each of those arbitrators shall jointly select a third arbitrator, who shall be appointed to arbitrate the dispute. Any such proceedings held pursuant to this provision shall be governed by Delaware law, including the Delaware Freedom of Information Act, and venue shall be in Delaware. Subject to the requirements of the Delaware Freedom of Information Act, the parties shall maintain the confidential nature of the arbitration proceeding and any hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation or arbitration, including attorneys’ fees.

12. Termination
12.1 Termination for Cause: If, for any reason, or through any cause, RIS fails to fulfill in its obligations under this Agreement, or if RIS violates any of the covenants, agreements, or stipulations in this Agreement, the DOI shall give written notice to RIS of such violation or breach (the "Notice"). Upon RIS's receipt of a Notice, RIS shall have five (5) business days to provide a written response and identify a method(s) to resolve the violation(s) (the "Response"). Upon the DOI's receipt of a Response, the DOI shall have five (5) business days to accept the Response in writing. If the DOI accepts the Response, the DOI will define the time by which RIS must fulfill its corrective obligations as set forth in the Response. If RIS does not provide a Response within five (5) business days from its receipt of the Notice or if the DOI does not accept the Response in writing within five (5) business days from its receipt of the Response, the Response shall be deemed rejected and this Agreement shall terminate immediately. In the event of a termination of this Agreement under this Section 12.1 only, RIS shall immediately cease all work and shall be compensated and paid for all work completed through the date of such termination.

12.2 Termination Without Cause: The DOI may terminate this Agreement in whole or in part without cause, but only after RIS is given: (i) not less than 30 calendar days written notice of intent to terminate; and (ii) an opportunity for consultation with the terminating party prior to termination.

12.3 Termination for Convenience: The DOI may terminate this Agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. The terminating party will provide an opportunity for consultation with the terminated party prior to termination.

12.4 Termination for Non-Appropriations: The Parties recognize that RIS is paid consistent with the Insurance Commissioner Regulatory Revolving Fund (the "RRF") pursuant to 18 Del. C. §§ 305(c) and 322. In the event the General Assembly fails to appropriate sufficient amounts to fund the RRF or if the General Assembly abrogates or repeals Section 305 and/or Section 322, in whole or part, the Agreement shall be terminated as to any obligation of the DOI or Delaware requiring expenditure of money for which no specific appropriation or funding is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such. For the avoidance of doubt, in the event the RRF receives funds subsequent to the termination of this Agreement under this Section 13.4, those funds shall be used to pay any outstanding sums owed to RIS for services provided prior to the date of termination. The DOI agrees to use its best efforts to pursue and collect outstanding invoices to insurers to replenish the RRF and pay
outstanding RIS costs.

12.5 Termination by RIS: RIS may terminate this Agreement if a supplemental RFP is issued by the DOI, as described in Section 20.16, by giving the DOI written notice thereof at least thirty (30) days before the effective date of such termination.

12.6 Procedure upon Termination: In the event of a termination of this Agreement for any or no reason, other than a termination under Section 13.1, RIS shall be entitled to finish all existing exams in process at the time of the termination, regardless of the date of termination, and shall be compensated and paid for such exams under the terms of this Agreement as though it were still in effect. RJS shall promptly transfer a copy of all information relating to the Services located on the RIS server to the DOI. The DOI agrees to pay any costs associated with copying and transferring such information. The DOI agrees and acknowledges that RIS may keep a copy of such information for its own records and may retain or destroy such information in accordance with its document retention policies. For the avoidance of doubt, RIS shall maintain physical possession of the RIS Server and shall not provide to the DOI copies of information that comprises RIS’s business records or other proprietary or confidential information.

12.7 The rights and remedies of the DOI and RIS provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13. Gratuities

The DOI may, by written notice to RIS, terminate this Agreement if it is found, after notice and hearing by the DOI or by opinion of the Delaware Public Integrity Commission, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by RIS or any agent or representative of RIS to any officer or employee of the DOI with a view towards securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determination with respect to the performance of this Agreement.

14. 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 extent the intent and agreements of the parties herein set forth.
15. **Assignment; Subcontracts**

15.1 Any attempt by a party to assign or otherwise transfer its rights in this Agreement without the prior written consent of the other party shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by RIS without prior written approval of the DOI. Delaware shall have the exclusive authority to approve or disapprove subcontractors and sub-subcontractors in its sole discretion.

15.3 RIS subcontractors subject to any separate professional standards shall expressly confirm that all Services performed on behalf of the DOI conforms to those professional standards. RIS shall ensure that its subcontractors provide the necessary confirmations. Subject to the terms of this Agreement, including Section 8, RIS shall be and remain liable for all monetary damages to Delaware caused by negligent performance or non-performance of work under this Agreement by RIS or any sub-subcontractor in accordance with the terms of this Agreement.

16. **Force Majeure**

Occurrence of force majeure does not fully remove liability of Parties for obligations under this Agreement. It merely suspends the Parties’ or Party’s obligation to perform for the duration of the delay.

17. **State of Delaware Business License**

17.1 In performance of this Agreement, RIS will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required, if any, in the performance of this Agreement shall be borne by RIS. RIS and all subcontractors working in the State of Delaware represent that they are properly licensed and authorized to transact business in Delaware as provided in 30 Del. C. § 2502 or have written authorization from the Delaware Department of Revenue that a Delaware license is not required.

17.2 RIS shall either furnish the DOI with proof of State of Delaware Business licensure or initiate the process of application where required or submit proof that such licensure is not required.

18. **Complete Agreement**

18.1 This Agreement shall constitute the entire agreement between the DOI and RIS 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.

18.2 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 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.

19. **Miscellaneous Provisions**

19.1 In performance of this Agreement, RIS shall comply with all applicable federal, state and local laws, ordinance, codes and regulations. RIS shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 This Agreement may not 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.

19.3 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.

19.4 RIS 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 the Services required to be performed under this Agreement. RIS further covenants, to its knowledge and ability, that in the performance of the Services no person having any such interest shall be employed.

19.5 RIS acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. RIS recognizes that if a determination is made by a court or similar body that it refuses to hire or do business with an individual or company due to reasons or race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the DOI may terminate this Agreement for cause subject to the provisions of Section 13.1 of this Agreement.
19.6 RIS 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, the DOI shall have the right to annul this Agreement without liability or at its discretion deduce from the contract or price 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.

19.8 RIS shall not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

19.9 The rights and remedies of the DOI provided for in this Agreement are in addition to any other rights and remedies provided by law.

19.10 This Agreement may be executed in counterparts, and each such counterpart shall be deemed an original as against the party signing the same.

19.11 If any provision of this Agreement, or application thereof, shall be held to be invalid, inoperative, or unenforceable, the invalidity shall not affect the other provisions or application thereof, of the balance of this Agreement which can be given effect without the invalid provision or applications; and to this end the provisions of this Agreement are declared to be severable.

19.12 In performing the Services subject to this Agreement, RIS, as set forth in 19 Del.C § 711, agrees that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. RIS shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. A determination by a court or similar body that RIS has violated the terms of this Section 20.12 will constitute a material breach of this Agreement.

19.13 No activity is to be executed in an offshore facility, either by a subcontracted firm or a foreign office or division of RIS without the express written approval of DTI and the DOI.

19.14 RIS affirms that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred.
and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

19.15 RIS shall maintain all public records, as defined by 29 Del. C. § 502(8), relating to this Agreement in the manner specified by the Delaware Division of Archives, and pursuant to 29 Del. C. Ch. 5. RIS shall maintain books, records, documents, and other evidence pertaining to this Agreement to the extent and in such detail as shall adequately reflect performance hereunder. RIS agrees to preserve and make available to any agency of the Delaware, upon request and written approval from DOI, such records for a period of five (5) years from the date services were rendered by RIS. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. RIS agrees to make such records available for inspection, audit, or reproduction to any agency of the State of Delaware subject to approval by the DOI. Upon notice given to RIS and approval received from the DOI, representatives of Delaware or other duly authorized state or federal agency with appropriate expertise may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Agreement. The cost of any audit disallowances resulting from the examination of records documenting RIS's performance of Services will be borne by RIS. Subject to the terms of this Agreement, including Section 8, reimbursements of RIS charges to any company examined for disallowances shall be drawn from RIS's own resources. In no event will RIS be responsible for reimbursing any amount in excess of what it has actually already received in charges paid by the DOI for the examination of such company. The DOI, not RIS, shall be responsible for reimbursing its own surcharges related to any disallowances being reimbursed by RIS.

19.16 In the event the DOI is dissatisfied with the Services, after providing written notice of the specific Service or Services that are not satisfactory, and providing a 30-day opportunity to cure, the DOI reserves the right to issue a supplemental RFP during the term of this Agreement if deemed in the best interest of the DOI as determined by the Delaware Insurance Commissioner. In the event a supplemental RFP is issued during the term of this Agreement, RIS has the option to terminate this Agreement in compliance with the provisions of Section 13.

20. Insurance

20.1 RIS recognizes that it is operating as an independent contractor and that it is responsible 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 RIS' gross negligence under this Agreement, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any willful act or omission on the part of RIS in its gross negligence under this Agreement.
20.2 RIS shall maintain such worker’s compensation insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. RIS is an independent contractor and is not an employee of the DOI or Delaware.

20.3 RIS shall maintain the following insurance during the term of this Agreement and provide certificates of insurance within ten (10) days of execution of this Agreement:

a. Worker’s Compensation and Employer’s Liability insurance in accordance with applicable law; and
b. Comprehensive General Liability - $1,000,000.00 per person/$3,000,000 per occurrence, and
c. Professional Liability - $1,000,000.00 per person/$3,000,000 per occurrence; or
d. Miscellaneous Errors and Omissions $1,000,000.00 per person/$3,000,000.00 per occurrence; or
e. If applicable, Automotive Liability Insurance covering all vehicles used in the work with limits of not less than $100,000 each person and $300,000 each accident as to bodily injury and $25,000 as to property damage to others. RIS currently does not use vehicles in the provision of the Services; and
f. Cyber Security insurance in amounts agreed upon by the Parties.

20.4 RIS shall provide forty-five (45) days written notice of cancellation or material change of any insurance policies after they have been submitted to the DOI pursuant to this Agreement.

20.5 In no event shall Delaware be named as an additional insured on any policy required under this Agreement.

20.6 Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

21. RIS Emergency Response Point of Contact

21.1 RIS shall provide the name(s), telephone, or cellular telephone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week when there is a critical need for commodities or services, when the Governor of Delaware declares a state of emergency under the Delaware Emergency Operations Plan, or in the event of a local emergency or disaster where a state governmental entity requires the services of RIS.

21.2 In the event of a serious emergency, pandemic or disaster outside the control of Delaware, the DOI may negotiate, as may be authorized by law,
emergency performance from RIS to address the immediate needs of the DOI, even if not contemplated under the original contract or procurement. Payments are subject to appropriation and other payment terms.

22. **Performance Bond**

There is no Performance Bond requirement.

23. **Assignment of Antitrust Claims**

As consideration for the award and execution of this Agreement by Delaware, RIS hereby grants, conveys, sells, assigns and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and Delaware, relating to the particular deliverables or Services provided pursuant to this Agreement. Upon either Delaware's or RIS' notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or Delaware, Delaware and RIS shall meet and confer about coordination of representation in such action.

24. **Governing Law**

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

24.2 RIS certifies that it complies with all federal, state and local laws applicable to its activities and obligations including: (i) the laws of Delaware; (ii) applicable portion of the Federal Civil Rights Act of 1964; (iii) The Equal Employment Opportunity Act and the regulations issued there under by the federal government; (iv) that programs, services, and activities provided to the general public under this Agreement conform to the Americans with Disabilities Act of 1990, and the regulations issued thereunder by the federal government. If RIS fails to comply with (i) through (iv) of this paragraph, Delaware reserves the right to terminate this Agreement or consider RJS in default after giving RIS written notice and 60 days to correct any violation.

24.3 RIS shall use commercially reasonable efforts to keep itself fully informed of and shall observe and comply with all applicable existing federal and state laws, and county and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the Services.

25. **Notices**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested.
All notices shall be sent to the following addresses:

TO DELAWARE:

The Honorable Trinidad Navarro Delaware Department of Insurance 1351 West North Street Suite 101 Dover, DE 19904

TO RIS:

Mr. John Tinsley 1351 West North Street Suite 201 Dover, DE 19904
EXHIBIT 2 SCOPE OF SERVICES

Pursuant to Paragraph 1.1, and as set forth more fully below, RIS shall provide both Discrete Billable Services and Discretionary Billable Services (the "Services"). The Services are broken down into two parts: Discrete Billable Services which consist of the Exam Services listed below and Discretionary Billable Services which consist of the expert financial services listed below under Special Deputy Services. The Special Deputy Services shall be billed to the DOI or the applicable insurer at the sole discretion of RIS with prior approval by the DOI.

A. Exam Services - Discrete Billable Services

- Scheduling, conducting and monitoring financial, market conduct, and/or targeted examinations ("Exams") of the business and affairs of Delaware domiciled and licensed insurance companies as required by applicable Delaware statutes as well as the guidelines and accreditation requirements of the National Association of Insurance Commissioners (the "NAIC");

- Scheduling and monitoring the DOI's participation in NAIC Exams of non-domestic companies as deemed appropriate by the DOI;

- Providing, at its own cost, training and technical support for all examiners;

- Providing a dedicated IT server, separate from the DOI/DTI server, for the work product of examination and financial analysis. The cost of maintaining the server is shared between RIS and the DOI. RIS' allocation is based on its utilization of the server to maintain its own financial records and the billing system; the DOI's allocation is based on the utilization of the server for exam and financial analysis work product. The DOI's allocation is paid from a fund managed by DOT personnel. Money is deposited in the fund from fees charged on examinations to cover the cost of IT resources utilized in examining and regulating the insurance companies.

- Preparing Certificates of Reserve Valuation for all domestic insurance companies required by law to file such valuation reports with the DOI;

- Advancing fees and expenses to the DOI's contract examiners for participation in Exams;

- Advising the Commissioner and the DOI concerning all applicable examination and valuation standards;
1 Procedures for conducting Examinations are set forth on Exhibit 2A.
• Attending and participating in hearings relating to examination, valuation or other matters, including mergers and acquisitions and hearings arising under Chapter 59, at the request of the Commissioner;

• Providing contract financial analysts for the Captive Division, The Bureau of Company Examination Rehabilitation and Guaranty and/or any other services requested by the DOI at rates as agreed to by the DOI and RIS.

• Preparing invoices for submission to insurers being examined for Exam charges and expenses;

• Preparing invoices to the DOI for contract analysts being utilized by the captive division and/or The Bureau of Company Examination Rehabilitation and Guaranty, and/or any other services requested by the DOI;

B. Special Deputy Services - Discretionary Billable Services

• Advising the Commissioner and the DOI on an as needed basis concerning admission applications for both traditional and captive insurers;

• Advising the Commissioner and the DOI on an as needed basis concerning mergers and acquisitions of Delaware domiciled insurers (both property & casualty and life and health);

• Advising the Commissioner and the 001 on an as needed basis concerning any matters arising in or under Title 18, Chapter 59 relative to the supervision, rehabilitation or liquidation of any Delaware domestic insurer;

• Attending NAIC national meetings at the request and discretion of the Commissioner and prepare or assist in preparing presentations for DOI staff as needed or requested;

• Participating in NAIC task force conference calls and meetings at the request and discretion of the Commissioner;

• Assisting as necessary, with the DOI's compliance with NAIC accreditation standards and examinations;

• Assisting and advising as necessary, the DOI's drafting and submission of legislation, regulations and bulletins; and

• Assisting and advising the Commissioner and the DOI as needed on any DOI regulatory matter at the discretion of the Commissioner.
Preparation of Budget for Examination: RIS shall prepare a detailed initial time and cost budget for each traditional insurer financial examination which shall be reviewed by the DOI, the Examiner-in-Charge and the company to be examined, with final approval to be granted by the DOI. RIS shall monitor the progress and cost of each financial examination and shall periodically report the status of each examination to the DOI. RIS shall communicate anticipated changes to the initial time and cost budget in excess of 15% to the DOI in writing and to the company as approved by the DOT. RIS and the DOI acknowledge that the budget is an estimate and does not establish the maximum amount charged for the examination.

Staffing of Examinations: RIS shall schedule each examination to include a CFE/CIE as the Examiner-in-Charge from the DOI’s list of approved CFEs, an Accredited Financial Examiner (AFE)/ Accredited Insurance Examiner (AIE) or other Contract Examiner as the Examiner-in-Charge, if specifically approved by the Commissioner. In addition, RIS shall schedule such other contract examiners and other professionals as needed to perform the examination in a professional and timely manner. Trainees, without a CFE or AFE designation, included on the DOI’s approved list of contract examiners may assist an Examiner-in-Charge in the conduct of an examination, but only under the personal guidance and control of the Examiner-in-Charge or other experienced examiner. The Chief Examiner has final approval of the plan and staffing for each examination.

Monitoring of Progress of Financial Examination: For traditional insurer examinations RIS shall periodically compare the agreed upon budget with the amount of work on any financial examination still uncompleted, but not less frequently than when the examination is 50% completed and 75% completed. If at any point in time RIS determines that the final cost of the financial examination will exceed the budget established by more than 15%, RIS shall notify the DOI and, if the DOI approves, the company under examination by providing a written explanation of the reasons for the projected cost overrun and an estimate of the final projected cost to the examination. The DOI or the company may request a meeting to discuss the reasons for the projected cost overrun. In the case of any dispute, the decision of the Commissioner as to the appropriateness and responsibility of the company to pay any amount in excess of the initial budget projection shall be binding upon the company and on RIS. Any reduction in the cost of the examination must be applied proportionately to each item on the invoice, including the DOI's surcharge. The DOI shall pay its proportionate share of any refund issued to a company.

Due to the nature of captive insurer examinations, detailed budgets are not prepared. Captive insurer examinations are typically performed in forty hours. Should an examination warrant additional time or professional resources, RIS shall report the concerns to the Director of Captive and Financial Insurance Products. The Director will have the final determination if additional time or resources will be approved.
Monitoring of Progress of Market Conduct Examinations: Due to the nature of Market Conduct examinations, detailed budgets are not prepared. Target examinations are called at the direction of the Director Market Conduct/Consumer Services (Director). Monthly meetings are conducted between RIS and the Director to discuss the progress of on-going examinations, any concerns regarding timeliness of examinations and any significant findings noted throughout the examinations.

Examination Reports: RIS shall act as contract administrator and in consultation with the Bureau of Company Examination, Rehabilitation and Guaranty ("BERG"), the Director Market Conduct/ Consumer Services or the Supervising Financial Analyst of the Bureau of Captive and Financial Insurance Products, shall coordinate the scheduling of CFE's, actuaries, CPA's and other professionals (the "Exam Professionals") on each examination. RTS will review findings and recommendations of Exam Professionals and those findings and recommendations shall be submitted to the DOT for review and approval in the form of a draft report. All draft and final examination reports shall be prepared independently of the insurer. Final reports shall be revised and printed in a manner acceptable to the DOI. After acceptance of the draft report by the DOI, the DOI will provide the draft report and a thirty (30) day review letter to the insurer. RIS will review any comments from the insurer and make recommendations to the DOI as to any necessary changes to the draft report. The DOI shall have final approval of any draft report. Following final approval of an examination report, RIS shall be responsible for the preparation, finalization and printing of Examination Reports which reports must comply with NAIC standards and be signed by the Examiner-in-Charge.

Coordinated Examinations: RIS shall arrange for qualified contract examiners, approved by the Commissioner, to participate in coordinated examinations.

Status Reports: RIS shall, in cooperation with the Chief Examiner of BERG, prepare performance evaluations of each of the DOI's contract examiners no less than annually. RIS shall inform the DOI of communications received regarding the performance of contract examiners, or other Exam Professionals providing services in the examination process. RIS will also provide status reports of pending and ongoing examinations as directed by the DOI. The DOI shall be responsible for making any decisions relative to those communications based on the information provided.
EXHIBIT 3
INVOICES AND PAYMENT

RIS shall prepare all invoices to insurers for examinations and other services provided under this contract. The invoices will be addressed to the insurer incurring the expenses and will be submitted to the DOI for review and approval prior to being sent to the insurer for payment.

Invoices prepared by RIS for Discrete Billable Services

For services rendered under this Agreement, RIS shall receive a minimum administrative fee of (i) 32% on fees billed by contract examiners and (ii) 22% on fees billed by actuaries, attorneys, investment specialists and other professionals. Invoices for discrete billable services shall include the following: (i) the nature of the examination (e.g. financial examination, target examination, market examination, etc.) (ii) the name of the Examiner-In-Charge, their hourly rate billed and expenses incurred in accordance with DOI guidelines; (iii) the names of the examiners participating on the examinations, their hourly rate billed and expenses incurred in accordance with DOI guidelines; (iv) the name of any actuarial firm, IT professional investment specialists, attorneys and other professional firms, their hourly rate billed, and expenses incurred in accordance with DOI guidelines;

All billings prepared by R1S for presentation to the insurer shall reflect, in addition to the costs and expenses of the contract examiners, actuaries, IT professional, investment specialists, attorneys and other professionals, a surcharge, which is a percentage of the total invoice amount, determined to be payable to DOI. The Department’s surcharge shall be applied to the total amount billed by RIS on each billing.

RIS shall bill examination related travel expenses of its personnel directly to the insurer being examined in accordance with DOI guidelines. RIS shall not charge an administrative fee on travel expenses. Both RIS and the DOI agree that RIS shall be reimbursed for examination related travel expenses directly by the insurer being examined.

Invoices for Discretionary Billable Services

RIS may submit invoices for Discretionary Billable Services and related travel and other expenses as and when determined by RIS, but only when accompanied with a separate and express authorization of the Commissioner which shall include an hourly rate for the services provided. RIS shall not charge an administrative fee for Discretionary Billable Services.
Invoices for RIS Server Costs

RIS shall prepare invoices to insurers covering the costs for the RIS Server. The insurers shall pay these invoices to a fund maintained by DOI personnel. RIS's costs incurred in connection with the RIS server shall be invoiced by RIS to the DOI quarterly and such invoices will include a summary of the specific charges and the supporting documentation. RIS agrees that it will not file for reimbursement at any time in an amount that exceeds the amount in the DOI's fund established to cover its share of costs of the RIS server. Any costs in excess of the amount in the DOI's fund shall be invoiced in subsequent quarters. DOI shall pay such invoices within 30 days from the fund maintained by DOI personnel. In the event this Agreement is terminated after RIS incurs costs in connection with the RIS server, but before the next quarterly invoice, RIS shall promptly submit such quarterly invoice after such termination regardless of whether the cost of the invoice exceeds the amount in the DOI's fund. The DOI agrees to continue billing insurers to cover the costs for the RIS server and use its best efforts to pursue and collect outstanding invoices for RIS server costs to insurers to replenish the DOI fund and pay the RIS invoice relating to costs for the RIS server in full.

PAYMENT

It is understood and agreed that all charges and expenses incurred relating to Discrete Billable Services by RIS will be paid by the insurers or insurance organizations being examined through the DOI pursuant to 18 Del. C. § 322, with the exception of Captives (which are paid from a separate Captive fund), BERG, or similar assignments, which shall be paid by funds held in the RRF. For the avoidance of doubt, no DOI or other state funds, other than funds collected pursuant to Section 322, held in the RRF, or held in the separate Captive fund, shall be used to pay any RIS invoice. Other than as described in this paragraph, the DOI will collect all payments from the insurers being billed. Except for payments received from insurers or insurance organizations by the DOI during the last two weeks of the fiscal year, the DOI shall pay RIS the amounts owed to RIS within 30 days of the DOI's receipt of payment from the insurer or insurance organization being billed. Any invoices on which payments are received by the DOI from an insurer or insurance organization during the last two weeks of a fiscal year shall be paid within 45 days of the DOI's receipt of such payments. Except for invoices addressed to the DOI and submitted by RIS during the last two weeks of the fiscal year, for amounts billed on each invoice relating to captive, BERG, and similar assignments, the DOI shall pay RIS, or cause to be paid to RIS, such amounts within 30 days of the DOI's receipt of the invoice from RIS. Any invoices addressed to the DOI and submitted by RIS during the last two weeks of a fiscal year shall be paid within 45 days of the DOI's receipt of the invoice from RIS.

In the event that an insurer or insurance organization fails to pay an uncontested invoice within forty-five (45) days after receipt, or a contested statement within forty-five (45) days after a decision is rendered, RIS may immediately cease a pending examination or valuation of the insurer or organization and otherwise limit its expenses. In the event that an invoice is contested by an insurer or organization, the insurer or organization shall submit an objection letter to the Commissioner. The Commissioner shall investigate the objection and issue a final decision letter as to the dispute as expeditiously as possible.