

AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT FOR LEGAL SERVICES (the "Agreement") is effective as of October ~~28~~ 2010 by and between DrinkerBiddle & Reath LLP ("Drinker") and the Department of Finance ("Department") for the State of Delaware ("State").

BACKGROUND:

On August 20, 2010 a Request for Proposals ("RFP") (copy attached hereto and incorporated by reference as Exhibit A) was issued by the Department to engage an individual or individuals within or independent of a law firm to act as independent reviewer in administrative proceedings held pursuant to 12 *Del. C.* §1156; and,

The Department received and the Proposal Evaluation Team under the RFP evaluated the sole proposal, which Drinker submitted, and found that Drinker's proposal met the minimum requirements under the RFP.

On September 29, 2010 the Proposal Evaluation Team under the RFP interviewed William T. Quillen Esq., Joseph C. Schoell Esq. and Shawn P. Tucker Esq. of Drinker and thereafter recommended to the Secretary of Finance (the "Secretary") that he accept the proposal of Drinker and authorize counsel for the Department to negotiate a contract with Drinker for provision of the services of an independent reviewer as described in 12 *Del. C.* §1156 and in the RFP ("Independent Reviewer Services").

The Secretary, on behalf of the Department, accepted the recommendation of the Proposal Evaluation Team under the RFP and has determined to engage Drinker to provide Independent Reviewer Services, and wishes to enter into this Agreement with Drinker because the proposal submitted by Drinker meets the needs of the Department. *See* Drinker's Proposal dated September 20, 2010, attached hereto as Exhibit B.

TERMS OF AGREEMENT

In consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Drinker and the Department (collectively the "Parties") hereto agree as follows:

1. Pursuant to 29 *Del. C.* §6982, Drinker is hereby appointed and employed to provide Independent Reviewer Services under 12 *Del. C.* §1156 in those cases in which the Secretary appoints Drinker Independent Reviewer.
2. Drinker agrees to provide Independent Reviewer Services under 12 *Del. C.* §1156 in cases that the Secretary assigns for the term of this Agreement.
3. Drinker agrees that it will assign members of its firm listed below to perform the legal services under this Agreement. The parties intend that William T. Quillen will personally provide or supervise the rendering of all Independent Reviewer services

and will personally preside at all hearings under 12 *Del. C.* §1156(h). The discounted billing rates for the attorneys are listed below:

Attorney	Normal Hourly Rate	Discounted Hourly Rate
William T. Quillen	\$485.00	\$485.00
Joseph C. Schoell	\$460.00	\$391.00
Karen V. Sullivan	\$395	\$335.75
Paralegals	\$130-230	\$130-230

Drinker agrees that the rate for any other attorneys who work on this engagement shall be at comparable normal hourly rates to those above, taking into account each attorney's experience and that each such attorney's discounted hourly rate shall reflect a fifteen percent (15%) discount, unless a lower discount rate applies. The Parties agree that if Drinker's billings exceed Two Hundred Fifty Thousand Dollars (\$250,000) (the "Billing Threshold") during any twelve (12) month period, the normal hourly rates for all lawyers other than William T. Quillen shall be adjusted to reflect a twenty percent (20%) discount from their normal hourly rates for hours worked during the remaining portion of the two year initial or extension term in which the Billing Threshold is reached. The above normal hourly rates are subject to adjustment on an annual basis after notice and agreement of the Parties.

4. Drinker shall bill the State no more frequently than monthly for hours spent on legal services rendered on behalf of and at the request of the Department at the discounted hourly rates agreed to in paragraph 3 of this Agreement that were in effect when such hours were worked. Each invoice shall be in a format customary in the community for Delaware legal billing for services rendered; however, the Department shall have the right to request reasonable alterations in the format of the billing, as it deems appropriate. Drinker agrees to comply with the *Delaware Department of Justice Outside Counsel Billing Policy*, attached hereto as Exhibit C. Copies of the bill should be sent to the Mark Udinski, Department of Finance, 820 N. French St., Wilmington, DE, 19801, with a copy to John S. McDaniel, Deputy Attorney General, at the same address. Bills shall be paid as provided by State law. In the event the Department, the Delaware Department of Justice ("DOJ") or the Governor's Counsel questions the substance of any bill or any item of work performed, Drinker shall provide such additional information as may reasonably be requested, and Drinker shall not charge any additional amount for any discussion, extra documentation or additional information required to settle any dispute regarding any issue related thereto. In accordance with 29 *Del. C.* §6982(b)(3), the amounts billed to the State shall be adjusted to exclude significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or

noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

5. Drinker agrees that the Department and the DOJ shall have the right to receive copies of all documents, submissions, filings, and/or reports to the Secretary that Drinker prepares in the performance of Independent Reviewer Services under this Agreement.
6. Drinker agrees that all documents generated by it under this Agreement, including research and all legal work products belong to the Department and upon request will be provided to it. The Department shall have the right to use any such legal work product or documents as it deems in its interest, without additional compensation to Drinker apart from the compensation earned under this Agreement.
7. Drinker provided the State a Verification of Insurance from AON Risk Services Northeast, Inc. dated September 9, 2010, indicating the amount of Drinker's professional indemnity insurance coverage under policy no. QB1000223. See Insurance Certificate, attached to Exhibit B.
8. Drinker performed an initial screening for potential conflicts of interest, in accordance with Drinker's long-standing procedures and has disclosed, reviewed and discussed all conflicts and potential conflicts with the Department of Justice. Prior to the execution of this Agreement Drinker will perform a complete screen for conflicts of interest and inform Mark Udinski and John S. McDaniel, Deputy Attorney General, if any conflict is identified. Further, prior to its appointment by the Secretary in any case and after an appointment by the Secretary during the pendency of the portion of any case during which Drinker is, or may be called upon under 12 *Del. C.* §1156 to render Independent Reviewer Services, including as a result of the remand of a case from the Court of Chancery, Drinker shall perform conflict checks and inform the Mark Udinski and John S. McDaniel of any actual or potential conflict that arises and that must be disclosed as required by the Delaware Lawyers' Rules of Professional Conduct. Such notice shall state in writing the names of the parties represented, the nature of the case and the actual or potential conflict. Until such time as it has notified the Department and DOJ in writing as required by this paragraph and received a written waiver of an actual or potential conflict of interest signed by the Deputy State Solicitor, Drinker shall neither commence work on any new matter nor continue work on any matter that it has undertaken at the time at which the conflict or potential conflict arises. Drinker understands and acknowledges that should DOJ choose not to waive the conflict, the State is free to obtain such legal services as necessary from other counsel as it deems appropriate.
9. Drinker understands and acknowledges that Drinker will work with the Department to perform the Independent Reviewer Services covered by this Agreement. Nothing in this Agreement restricts the Department's freedom to appoint another person as Independent Reviewer in a specific case or guarantees Drinker the right to perform

Independent Reviewer Services, except those that the Secretary specifically requests Drinker to perform.

10. Prior to incurring any costs to be charged to the Department, Drinker shall consult with Mark Udinski and the DOJ and obtain their approval.
11. The terms set forth in the RFP attached as Exhibit A, in particular those set forth in Section IV.D. of the RFP, are incorporated herein by reference and made a part of this Agreement as if fully set forth herein. To the extent that there is any conflict between the language of this Agreement and the language of the RFP, this Agreement shall govern.
12. The validity of this Agreement and the determination of the rights and liabilities of the Parties hereunder shall be decided in accordance with the laws of the State of Delaware and no other, except to the extent that federal law be applicable. Any litigation which may be instituted between the State and Drinker regarding this Agreement shall be filed and litigated in the State of Delaware.
13. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement as of the date first above written.

DrinkerBiddle & Reath LLP

State of Delaware, Department of Finance

By: _____

Partner on behalf of
Drinker Biddle + Reath LLP

By: _____

Thomas J. Cook, Secretary of Finance

EXHIBIT A



Verification of Insurance

We, the undersigned Insurance Brokers, hereby verify that Swiss Re International SE and Various Insurance Companies have issued the following described insurance, each for their own part and not one for the other, and which is in force as of the date hereof:

Issued to: State of Delaware and each of its Departments, Agencies, and Instrumentalities

Type of Insurance: Professional Indemnity Insurance

Name of Assured: DRINKER BIDDLE & REATH LLP and others, as more fully described in the Primary Policy Wording.

Policy No.: QB1000223

Insurers: Swiss Re International SE and Various Insurance Companies

Period: 12:01 a.m. April 1, 2010 to 12:01 a.m. April 1, 2011

Limit: Not less than \$30,000,000 each claim
(as provided for in the Policy) (Limits shown are as requested)

Geographical Limitation: Worldwide Coverage

Subject to the terms, conditions, exclusions and limitations of the Policy(ies).

This document is furnished as a matter of information only. The issuance of this document does not make the person or organization to whom it is issued an additional Assured, nor does it modify in any manner the contract of insurance between the Assured and the Insurers. Any amendment, change or extension of such contract can only be effected by specific endorsement attached thereto.

Aon Risk Services Northeast, Inc.

Date: September 9, 2010

Per: Robert E. Cook
Managing Director

Professions Practice | Aon Risk Services Northeast, Inc.
199 Water Street | 8th Floor | New York, NY 10038
t: +1.212.441.1000 | f: +1.212.441.1953
w: aon.com

EXHIBIT B

II. Scope of Services

The Department of Finance ("DoF") is seeking individuals to serve as Independent Reviewers pursuant to 12 *Del. C.* §1156, as amended by 77 *Del. Laws* c.417 (July 23, 2010) in administrative review proceedings pertaining to abandoned and unclaimed property disputes.

The Secretary of Finance will appoint Independent Reviewers to act in that capacity under 12 *Del. C.* § 1156(g). Independent Reviewers will review the protest record made before the State Escheator and the State Escheator's disposition of a holder's written protest pertaining to abandoned and unclaimed property, hold an oral hearing, receive briefs of the holder and the State Escheator and render a written decision setting forth findings of fact and conclusions of law to be submitted to the Secretary of Finance. 12 *Del. C.* § 1156(h) & (i). The records to be reviewed may be large and may consist largely of accounting reports. Given the statutorily imposed deadlines, there will be a premium on the ability to review and understand the records quickly and efficiently. Independent Reviewers will hold hearings under the contract at DoF offices in Wilmington, Delaware.

The new statute requires that an Independent Reviewer be "a former member of the Delaware judiciary, an individual who has been previously appointed and served as a master of any Delaware court, or an attorney licensed in the State of Delaware who is qualified by experience or training to serve." 12 *Del. C.* §1156(g). DoF anticipates responses to this RFP from law firms as well as individuals; however, because of the statutory criteria quoted above, in the case of responses by law firms, contracts will be entered into with individuals affiliated with such firms who meet the statutory criteria. The DoF anticipates making multiple awards, and the award of a contract will not assure that the winning bidder is selected for any case.

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Delaware business license:
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Professional liability insurance:
Provide evidence of professional liability insurance in the amount of \$2,000,000.00. In order to satisfy this requirement, the Vendor must:
 - A. Include a statement in its proposal affirmatively responding to this requirement; and
 - B. Include in its proposal either:
 - 1) A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to the contact person, that Vendor will have such coverage as of the date the Contract commences.

B. General Evaluation Requirements

1. Experience and Reputation—Describe length of existence of firm, practice areas generally and specific practice areas that the bidder believes are relevant to resolving unclaimed and abandoned property disputes. Describe the experience of the Independent Reviewer candidate(s) and those proposed to assist the candidates in the abandoned and unclaimed property area, if any, and, in general, managing large, complex bodies of financial information in connection with litigation.
2. Expertise—Describe the particular expertise of the persons proposed to serve as Independent Reviewers and of other persons who may assist Independent Reviews. Explain how these persons meet the statutory requirements for Independent Reviewers.
3. Capacity to meet requirements (size, financial condition, etc.)—Describe size of firm and in particular the capacity of the Independent Reviewer candidate and those

assisting the Independent Reviewer to manage potentially large numbers of documents in the record in an efficient and timely manner.

4. Demonstrated ability—Describe relevant accomplishments of Independent Reviewer candidate (*e.g.*, judicial experience, arbitrator service, other relevant legal experience).

5. Fee Proposal.—Include the current billing rates for the person(s) proposed to act as Independent Reviewers and any attorneys or paraprofessionals anticipated to assist the Independent Reviewer, including discounts. All Vendors must submit the foregoing information; however, DoF will also accept proposals for alternative billing arrangements that enhance the value and efficiency of the services to be provided. Vendors may submit a statement not to exceed one page describing any alternative pricing proposal.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP

This RFP is available in electronic form through the State of Delaware, Department of finance website at <http://finance.delaware.gov/> (which will refer the viewer to www.bids.delaware.gov) and the State of Delaware Procurement website at www.bids.delaware.gov. Paper copies of this RFP will be available upon request by contacting Mark Udinski, State Escheator, Delaware Department of Finance, 820 N. French St., Wilmington, DE 19801, Telephone (302) 577-8260, E-mail mark.udinski@state.de.us.

2. Public Notice

Public notice has been provided in accordance with 29 Del. C. § 6981.

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the Vendor. Vendors should rely only on written statements issued by the RFP designated contact.

NAME: Mark Udinski
DEPARTMENT: State Escheator, Delaware Dept. of Finance
ADDRESS: 820 N. French St., Wilmington, DE 19801
EMAIL ADDRESS: mark.udinski@state.de.us

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services may also be used.

5. Consultants and Legal Counsel

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the Vendors' responses.

Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

6. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a Vendor who:

- a) Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b) Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
 - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;

- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each Vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 5 paper copies and 1 electronic copies on CD.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **5:00 PM EDT on September 20, 2010**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

Mark Udinski
State Escheator, Delaware Dept. of Finance
820 N. French St.,
Wilmington, DE 19801

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **5:00 PM EDT on September 20, 2010**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing Vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of Vendor proposals, each Vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve Vendors from any obligation in respect to this RFP.

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. Proposal Costs and Expenses

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at Vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through October 1, 2010. The State of Delaware reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, Vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all Vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing Vendors prior to contract award.

8. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

9. **Concise Proposals**

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

10. **Realistic Proposals**

It is the expectation of the State of Delaware that Vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility or increase obligation for a Vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. **Confidentiality of Documents**

All documents submitted as part of the Vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any Vendor's information to a competing Vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a Vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate,

sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C. § 10002(d)*, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

12. Sub-Contracting

The Vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments other than for duties that must by law be performed by the individual(s) selected as Independent Reviewer(s); however, Vendors assume all responsibility for work quality, delivery, and any supporting services required by a subcontractor. Notwithstanding any matter herein to the contrary, the person(s) selected as Independent Reviewers shall personally oversee all aspects of his or her performance as Independent Reviewer and shall personally hold the hearing and author the report described in 12 *Del. C. § 1156(i)*

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

13. Conflicts of Interest

In general. If a conflict of interest arises, the Vendor should be willing to continue to serve as an Independent Reviewer and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than DoF, but does not expect to waive any other conflicts. DoF reserves the right, in its sole discretion, to select another approved individual to serve as Independent Reviewer on a particular matter if a conflict is not resolved to its satisfaction.

Each Vendor shall complete a conflicts check for the State and its agencies in connection with its proposal in response to the RFP and in connection with each appointment by the Secretary of Finance of the Vendor as an Independent Reviewer for a specific case. Each Vendor shall identify any conflicts of interest which exist or may arise if the Vendor or one of its lawyers serves as Independent Reviewer and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of

parties involved in the transactions or other matters involving DoF by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

DoF recognizes that Vendors may have conflicts due to previous representations. DoF encourages Vendors with conflicts to submit proposals, identify the conflicts and describe recommended resolutions.

14 Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of Vendor. Should Vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, Vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of Vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

a. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State's website at <http://finance.delaware.gov/> by 12:00 PM each Friday. Vendors' names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Question

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

15. State's Right to Reject Proposals

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or Vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

16. State's Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any Vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

17. State's Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C.* § 6986, the State of Delaware may award a contract for a particular professional service to two or more Vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware. DoF expects to make multiple awards in order to have a group of qualified persons from which to make Independent Reviewer appointments.

18. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

19. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at <http://finance.delaware.gov/>. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

20. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

21. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful Vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a Vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no Vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the Vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the Vendor who submits the lowest bid of the Vendor who receives the highest total point score, rather the contract will be awarded to the Vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning Vendor will be invited to negotiate a contract with the State of Delaware; remaining Vendors will be notified in writing of their selection status.

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of Vendors. Vendors must provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which Vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team may negotiate with one or more Vendors during the same period and may, at its discretion, terminate negotiations with any or all Vendors. The Team shall make a recommendation regarding the award to the Secretary of Finance, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful Vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing Vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.

- Request modification to proposals from any or all Vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any Vendor and negotiate with more than one Vendor at the same time.
 - Select more than one Vendor pursuant to 29 Del. C. §6986. DoF intends to select more than one Vendor in order to have a group of qualified persons under contract available for appointment so that the unavailability of any specific individual for any reason does not delay the administrative review process.

a. Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

Criterion	Weight
Experience and Reputation	15%
Expertise	40%
Capacity to Meet Requirements	15%
Demonstrated Ability	15%
Fee Proposal	15%
Total	100%

3. Proposal Clarification

The Evaluation Team may contact any Vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The Evaluation Team may contact any customer of the Vendor, whether or not included in the Vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include Vendor personnel. If the Vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations

Selected Vendors may be invited to make oral presentations to the Evaluation Team. The Vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the Vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the Vendor's responsibility.

D. Contract Terms and Conditions

1. General Information

- a. The term of the contract between the successful bidder and the State shall be for 2 years with 2 extensions for a period of 2 for each extension; provided, however, that entering into a contract does not guarantee that DoF will select the bidder or an individual associated with the bidder for appointment in any case.
- b. The selected Vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected Vendor or Vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected Vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The successful Vendor shall promptly execute a contract incorporating the terms of this RFP. No Vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful Vendor.
- e. If the Vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another Vendor. Such Vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud

Any evidence of agreement or collusion among Vendor(s) and prospective Vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such Vendor(s) void.

By responding, the Vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing Vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the Vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the Vendor's proposal preparation.

Advance knowledge of information which gives any particular Vendor advantages over any other interested Vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected Vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

4. Solicitation of State Employees

Until contract award, Vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the Vendor, its affiliates, actual or prospective contractors, or any person acting in concert with Vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a Vendor may result in rejection of the Vendor's proposal.

This paragraph does not prevent the employment by a Vendor of a State of Delaware employee who has initiated contact with the Vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or

federal law. If a Vendor discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms

a. Independent contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party, or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware shall provide working space and sufficient supplies and material to augment the Contractor's services.

b. Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the 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.

c. Licenses and Permits

In performance of the contract, the Vendor 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 in the performance of the contract shall be borne by the successful Vendor. The Vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

Prior to receiving an award, the successful Vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject Vendor to applicable fines and/or interest penalties.

d. Notice

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

NAME	Mark Udinski
DEPARTMENT	State Escheator, Delaware Department of Finance
ADDRESS	820 N. French St., Wilmington, DE 19801

c. **Indemnification**

1. **General Indemnification.**

By submitting a proposal, the proposing Vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the Vendor's its agents and employees' performance work or services in connection with the contract, ~~regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or part, to the State, its employees or agents.~~

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(For DBR)
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2. **Proprietary Rights Indemnification**

Vendor shall warrant that all elements of its solution, including 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 State of Delaware, the State of Delaware shall promptly notify the Vendor in writing and Vendor shall defend such claim, suit or action at Vendor's expense, and Vendor shall indemnify the State of 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 (including methods) products or other intellectual property used or furnished by the Vendor (collectively "Products") is or in Vendor's reasonable judgment is likely to be, held to constitute an infringing product, Vendor shall at its expense and option either:

- (a) Procure the right for the State of Delaware to continue using the Product(s);
- (b) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- (c) 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 the State of Delaware agrees to and accepts in writing.

f. Insurance

1. Vendor recognizes that it is operating as an independent contractor and 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 the Vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Vendor in their negligent performance under this contract.
2. The Vendor shall maintain such 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. The Vendor is an independent contractor and is not an employee of the State of Delaware.
3. During the term of this contract, the Vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Comprehensive General Liability	\$1,000,000
b.	Professional Liability/Misc. Error & Omissions/Product Liability	\$2,000,000/\$3,000,000

If the contractual service requires the transportation of departmental clients or staff, the Vendor shall, in addition to the above coverages, secure at its own expense the following coverage:

a.	Automotive Liability (Bodily Injury)	\$100,000/\$300,000
b.	Automotive Property Damage (to others)	\$ 25,000

4. The Vendor shall provide a certificate of insurance as proof that the Vendor has the required insurance.

g. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials,

and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

h. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected Vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed.

i. Penalties

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.

j. Termination for Cause.

If for any reasons, or through any cause, the Vendor fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

k. Termination for Convenience

The State of Delaware may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such

documents and other materials which is useable to the State of Delaware. If the contract is terminated by the State of Delaware as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made.

l. Non-discrimination

In performing the services subject to this RFP the Vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful Vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

m. Covenant against Contingent Fees

The successful Vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

n. Vendor Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the Vendor. The Vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

o. Work Product

All materials and products developed under the executed contract by the Vendor are the sole and exclusive property of the State. The Vendor will seek written permission to use any product created under the contract.

p. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful Vendor shall constitute the contract between the State of Delaware and the Vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's

response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the Vendor.

q. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful Vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- (1) the laws of the State of Delaware;
- (2) the applicable portion of the Federal Civil Rights Act of 1964;
- (3) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- (4) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- (5) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any Vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the Vendor in default.

The selected Vendor shall 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 work.

r. Scope of Agreement

If the scope of any provision of the contract is determined to be 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 contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

s. **Other General Conditions**

- (1) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- (2) **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

E. **RFP Miscellaneous Information**

1. **No Press Releases or Public Disclosure**

Vendors may not release any information about this RFP. The State of Delaware reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the State of Delaware.

2. **RFP Reference Information**

The State of Delaware has made every attempt to provide the necessary information within this RFP.

3. **Definitions of Requirements**

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.