

AGREEMENT FOR INDEPENDENT REVIEWER SERVICES

THIS AGREEMENT FOR INDEPENDENT REVIEWER SERVICES (the "Agreement") is effective as of the 25th day of July, 2013 by and between Gellert Scali Busenkell & Brown LLC ("Gellert") and Department of Finance (the "State" or "Department") with the approval of the Governor and Attorney General.

WITNESSETH:

WHEREAS, the State is required by the Delaware Code to offer Independent Reviewer Services in relation to administrative review proceedings of abandoned and unclaimed property matters pursuant to 12 *Del. C.* § 1156; and

WHEREAS, the Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager governs the conduct of Independent Reviewer Services (hereafter the "Regulation" and attached hereto as Exhibit A); and

WHEREAS, 12 *Del. C.* § 1156 (g) requires that an Independent Reviewer must be either "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"; and

WHEREAS, the State advertised a Request for Proposals for Independent Reviewer Services for Contract Number FIN13001-INDREVIEWR (hereafter the "RFP") on April 12, 2013; and

WHEREAS, Gellert submitted a timely Proposal in response to the RFP; and

WHEREAS, the State received and evaluated proposals from several interested parties and,

WHEREAS, Gellert was selected for negotiation pursuant to the terms of the RFP; and

WHEREAS, the State has determined to engage Gellert to act as an Independent Reviewer and wishes to enter into this Agreement with Gellert because the proposal submitted by Gellert was technically superior, and meets the needs of the State. See Gellert Proposal dated May 10, 2013 attached hereto as Exhibit B.

NOW THEREFORE, 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, Gellert and the State (collectively the "Parties") hereto agree as follows:

1. Pursuant to 29 *Del. C.* §6982, Gellert is hereby appointed and employed to provide Independent Reviewer Services under 12 *Del. C.* §1156, and pursuant to the Regulation, in those cases in which the Secretary appoints Gellert Independent Reviewer.

2. Gellert agrees to serve as Independent Reviewer and perform such duties as dictated and required by 12 *Del. C.* §1156 during the duration of this Agreement and shall commence providing Independent Reviewer services on the effective date of this Agreement and upon selection and designation by the Department of Finance. Notwithstanding the preceding, the Parties acknowledge that this Agreement is subject to termination at will by the State, with or without cause.
3. The term of this Agreement shall be for a period of 2 years commencing on the date of execution as set forth above. The State shall be entitled to excise two (2) options to renew this Agreement, each such option to renew shall be for a period of two (2) years.
4. Gellert agrees that it will assign members of its firm listed below to perform the Independent Reviewer services under this Agreement. The standard billing rates are listed below. Below is a listing of Gellert's alternative billing rates:

	Standard Rate	Discount Rate
Ronald S. Gellert	\$480	\$275
Charles M. Brown	\$480	\$275
Brya M. Keilson	\$270	\$200
Helen Belair	\$175	\$100
Dawn Abernathy	\$175	\$100

Gellert agrees that the rate for any other attorneys who work on this engagement shall be at comparable rates to those above, taking into account each attorney's experience. The Parties agree that only Ronald S. Gellert, Esquire can act as an Independent Reviewer and that all other listed individuals listed above may participate in assisting Ronald S. Gellert, Esquire in providing such services.

5. Gellert shall bill the State no more frequently than monthly for hours spent on Independent Reviewer services rendered on behalf of and at the request of the State at the rates agreed to in paragraph 3 of this Agreement. In addition, Gellert shall bill at seventy-five per cent (75%) of its normal rates for charges such as copying, telephone, and mileage, and cost for other expenses such as postage, parking and similar fixed cost expenses that directly relate to the services provided as Independent reviewer. Each invoice shall be in a format customary in the community for Delaware legal billing for services rendered; however, the State shall have the right to request reasonable alterations in the format of the billing, as it deems appropriate. Gellert agrees to comply with the *Delaware Department of Justice Outside Counsel Billing Policy*, attached hereto as Exhibit B. Copies of the bill should be sent to State Escheator, Department of Finance, 820 N. French St., Wilmington, DE, 19801. Bills shall be paid as provided by State law. In the event the State questions the substance of any bill or any item of work performed, Gellert shall provide such additional information as the State may reasonably request, and

Gellert shall not charge any additional amount for any discussion or extra documentation required to settle any dispute regarding any issue related thereto.

6. Gellert agrees that it shall perform Independent Reviewer services as set forth at 12 *Del. C.* §1156 and in conformity with all other applicable law, regulations, rules, procedures, or protocols adopted by the Department of Finance and that the State shall have the right to receive copies of all documents, submissions, filings, and/or pleadings, to monitor, direct, and/or participate in the performance of Independent Reviewer services by Gellert under this Agreement, unless such production shall objectively create an unfair advantage to the State in a specific and active matter being reviewed.
7. Gellert agrees that, unless prohibited by law, regulation or rule, all documents generated by it under this Agreement, including all research and all work products belong to the State and upon request will be provided to it. The State shall have the right to use any such legal work product or documents as it deems in its interest, without compensation to Gellert apart from the compensation earned under this Agreement.
8. Gellert has provided the State a Certificate of Insurance from The Hartford Financial Services, Policy LT 1627700, September 14, 2012. See Exhibit C.
9. Gellert performed an initial screening for potential conflicts of interest, in accordance with Gellert'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, Gellert will perform a complete screen for conflicts of interest and inform the State Escheator 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 Gellert 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 State of Delaware Court of Chancery, Gellert shall perform conflict checks and inform the State Escheator 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 State in writing as required by this paragraph and received a written waiver of an actual or potential conflict of interest signed by the State, Gellert 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. Gellert understands and acknowledges that should the State choose not to waive the conflict, the State is free to obtain such legal services as necessary from other counsel as it deems appropriate.
10. Gellert understands and acknowledges that the State will work with Gellert to perform the Independent Reviewer work covered by this Agreement through the

Department of Finance. Nothing in this Agreement guarantees Gellert the right to perform any specific Independent Reviewer services, except those that the State specifically requests Gellert to perform.

11. Gellert understands that it is acting as an independent hearing officer for the State and will be required to render decisions which may affect property rights. The role of Independent Reviewer requires that substantive and procedural Due Process be appropriately afforded to each party participating in the Independent Review process. Accordingly, it shall be an express and material term of this Agreement that the State shall be forbidden from taking any retaliatory action in relation to the administration of this Agreement.
12. Prior to incurring any costs to be charged to the State other than as identified in Paragraph 2 herein, Gellert shall consult with the State and obtain its approval.
13. 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.
14. 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 Gellert regarding this Agreement shall be filed and litigated in the State of Delaware.
15. 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.
16. This Agreement and its Attachments shall constitute the entire agreement between Delaware and Gellert 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.
17. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

18. 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. Gellert covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Gellert further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
20. Gellert acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Gellert recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Gellert in breach of the Agreement, terminate the Agreement, and designate Gellert as non-responsible.
21. 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.

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

**GELLERT SCALI BUSENKELL
& BROWN, LLC**
913 North Market Street, 10th Floor
Wilmington, DE 19801

**STATE OF DELAWARE
DEPARTMENT OF FINANCE**
Carvel State Office Building, 8th Floor
820 North French Street
Wilmington, DE 19801

Original on File

Original on File

By: _____
Ronald S. Gellert, Member

By: _____
Secretary of Finance Thomas J. Cook

AGREEMENT FOR INDEPENDENT REVIEWER SERVICES

THIS AGREEMENT FOR INDEPENDENT REVIEWER SERVICES (the "Agreement") is effective as of the 15th day of August, 2013 by and between McCarter & English, LLP ("McCarter") and Department of Finance (the "State" or "Department") with the approval of the Governor and Attorney General.

WITNESSETH:

WHEREAS, the State is required by the Delaware Code to offer Independent Reviewer Services in relation to administrative review proceedings of abandoned and unclaimed property matters pursuant to 12 *Del. C.* § 1156; and

WHEREAS, the Regulation on Practices and Procedures for Appeals of Determinations of the Audit Manager governs the conduct of Independent Reviewer Services (hereafter the "Regulation" and attached hereto as Exhibit A); and

WHEREAS, 12 *Del. C.* § 1156 (g) requires that an Independent Reviewer must be either "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"; and

WHEREAS, the State advertised a Request for Proposals for Independent Reviewer Services for Contract Number FIN13001-INDREVIEWR (hereafter the "RFP") on April 12, 2013; and

WHEREAS, McCarter submitted a timely Proposal in response to the RFP; and

WHEREAS, the State received and evaluated proposals from several interested parties; and,

WHEREAS, McCarter was selected for negotiation pursuant to the terms of the RFP; and

WHEREAS, the State has determined to engage McCarter to act as an Independent Reviewer and wishes to enter into this Agreement with McCarter because the proposal submitted by McCarter was technically superior, and meets the needs of the State. See McCarter Proposal dated May 10, 2013 attached hereto as Exhibit B.

NOW THEREFORE, 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, McCarter and the State (collectively the "Parties") hereto agree as follows:

1. Pursuant to 29 *Del. C.* §6982, McCarter is hereby appointed and employed to provide Independent Reviewer Services under 12 *Del. C.* §1156, and pursuant to the Regulation, in those cases in which the Secretary appoints McCarter Independent Reviewer.

2. McCarter agrees to serve as Independent Reviewer and perform such duties as dictated and required by 12 *Del. C.* §1156 during the duration of this Agreement and shall commence providing Independent Reviewer services on the effective date of this Agreement and upon selection and designation by the Department of Finance. Notwithstanding the preceding, the Parties acknowledge that this Agreement is subject to termination at will by the State, with or without cause.
3. The term of this Agreement shall be for a period of 2 years commencing on the date of execution as set forth above. The State shall be entitled to excise two (2) options to renew this Agreement, each such option to renew shall be for a period of two (2) years.
4. McCarter agrees that it will assign members of its firm listed below to perform the Independent Reviewer services under this Agreement. The standard billing rates are listed below. Below is a listing of McCarter's alternative billing rates:

	<u>Standard Rate</u>	<u>Discount Rate</u>
David A. White	\$485.00	\$436.50
Daniel M. Silver	\$400.00	\$360.00
Daniel J. Brown	\$400.00	\$360.00
Theodore W. Annos	\$360.00	\$324.00
Paralegals	\$200.00	\$180.00

McCarter agrees that the rate for any other attorneys who work on this engagement shall be at comparable rates to those above, taking into account each attorney's experience.

5. McCarter shall bill the State no more frequently than monthly for hours spent on Independent Reviewer services rendered on behalf of and at the request of the State at the rates agreed to in paragraph 3 of this Agreement. Each invoice shall be in a format customary in the community for Delaware legal billing for services rendered; however, the State shall have the right to request reasonable alterations in the format of the billing, as it deems appropriate. McCarter agrees to comply with the *Delaware Department of Justice Outside Counsel Billing Policy*, attached hereto as Exhibit B. Copies of the bill should be sent to State Escheator, Department of Finance, 820 N. French St., Wilmington, DE, 19801. Bills shall be paid as provided by State law. In the event the State questions the substance of any bill or any item of work performed, McCarter shall provide such additional information as the State may reasonably request, and McCarter shall not charge any additional amount for any discussion or extra documentation required to settle any dispute regarding any issue related thereto.
6. McCarter agrees that it shall perform Independent Reviewer services as set forth at 12 *Del. C.* §1156 and in conformity with all other applicable law, regulations, rules, procedures, or protocols adopted by the Department of Finance and that the State

shall have the right to receive copies of all documents, submissions, filings, and/or pleadings, to monitor, direct, and/or participate in the performance of Independent Reviewer services by McCarter under this Agreement, unless such production shall objectively create an unfair advantage to the State in a specific and active matter being reviewed.

7. McCarter agrees that, unless prohibited by law, regulation or rule, all documents generated by it under this Agreement, including all research and all work products belong to the State and upon request will be provided to it. The State shall have the right to use any such legal work product or documents as it deems in its interest, without compensation to McCarter apart from the compensation earned under this Agreement.
8. McCarter has provided the State a Certificate of Insurance from **ALAS, Policy ALA#1189, effective January 1, 2013 to January 1, 2014.** See Exhibit C.
9. McCarter performed an initial screening for potential conflicts of interest, in accordance with McCarter'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, McCarter will perform a complete screen for conflicts of interest and inform the State Escheator 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 McCarter 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 State of Delaware Court of Chancery, McCarter shall perform conflict checks and inform the State Escheator 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 State in writing as required by this paragraph and received a written waiver of an actual or potential conflict of interest signed by the State, McCarter 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. McCarter understands and acknowledges that should the State choose not to waive the conflict, the State is free to obtain such legal services as necessary from other counsel as it deems appropriate.
10. McCarter understands and acknowledges that the State will work with McCarter to perform the Independent Reviewer work covered by this Agreement through the Department of Finance. Nothing in this Agreement guarantees McCarter the right to perform any specific Independent Reviewer services, except those that the State specifically requests McCarter to perform.
11. McCarter understands that it is acting as an independent hearing officer for the State and will be required to render decisions which may affect property rights. The role

of Independent Reviewer requires that substantive and procedural Due Process be appropriately afforded to each party participating in the Independent Review process. Accordingly, it shall be an express and material term of this Agreement that the State shall be forbidden from taking any retaliatory action in relation to the administration of this Agreement.

12. Prior to incurring any costs to be charged to the State other than as identified in Paragraph 2 herein, McCarter shall consult with the State and obtain its approval.
13. 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.
14. 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 McCarter regarding this Agreement shall be filed and litigated in the State of Delaware.
15. 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.
16. This Agreement and its Attachments shall constitute the entire agreement between Delaware and McCarter 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.
17. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
18. 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. McCarter covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the

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

20. McCarter acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. McCarter recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare McCarter in breach of the Agreement, terminate the Agreement, and designate McCarter as non-responsible.
21. 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.

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

McCarter & English, LLP
405 N. King Street, 8th
Wilmington, DE 19801-3717

STATE OF DELAWARE
DEPARTMENT OF FINANCE
Carvel State Office Building, 8th Floor
820 North French Street
Wilmington, DE 19801

Original on File

Original on File

D.
Name/Title

*David A. White
Partner*

By: _____
Secretary of Finance Thomas J. Cook