



STATE OF DELAWARE

ADMINISTRATIVE OFFICE OF THE COURTS

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AMY ARNOTT QUINLAN
STATE COURT ADMINISTRATOR

TO: ALL OFFERORS

FROM: ASHLEY TUCKER

SUBJECT: ADDENDUM TO REQUEST FOR PROPOSAL
CONTRACT NO. JUD17002-KIOSKS

ADDENDUM #2

This Addendum is issued to answer vendor questions and incorporates the questions and answers provided in Addendum 1. All other terms and conditions of the RFP remain the same.

Q. 1 IV Professional Services RFP Administrative Information, B. RFP Submissions, 5. Proposal Expiration date, Page 11 provides that "Prices quoted in the proposal shall remain fixed and binding on the bidder at least through September 1, 2018." Can the State confirm the date that proposals must remain fixed and binding as September, 2018 is more than a year?

The date is correct.

Q. 2 IV. Professional Services RFP Administrative Information, D. Contract Terms and Conditions, 1. General Information, b. Page 19, states "Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware." Can the State confirm if the "standard contract" are the terms and conditions outlined in Section D of the RFP or if there is a separate standard contract with additional terms and conditions? If the latter, can the State provide the State's standard contract so that the vendors may review that document?

Attached to the end of this document is a copy of the Administrative Office of the Courts' proposed contract, subject to certain changes based on the selected vendor's specific responses.

- Q. 3 IV. Professional Services RFP Administrative Information, D. Contract Terms and Conditions, 5. General Contract Terms, t. Work Product, Page 28: provides that "all materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State." Since this is not a professional services or consultant contract and the vendor is not developing any materials or products under the contract, will the State consider removing this provision?**

Please review the attached proposed contract.

- Q. 4 Are you looking for the company who provides the kiosks to also offer credit card processing capabilities?**

Yes. The company that will provide the kiosks needs to have the capability to process credit card transactions on behalf of certain agencies, as well as the ability to pass through certain credit card transactions to a State approved vendor that processes such transactions.

- Q. 5 To clarify, certain agencies can use the recommended credit card processor of the kiosk company (assuming this isn't the State approved credit card vendor). Other agencies will require the use of the State approved credit card vendor to process transactions.**

Currently, all State agencies use the State approved credit card merchant. The selected vendor would be required to build an interface that securely hands the transaction off to the State gateway provider and in turn the State approved processor.

We have one exception, and due to the handling of federal regulations and accounting, that agency uses the kiosk vendor's credit card services through an interface that works with their specialized software system.

If there are development costs associated with the creation of these interfaces; please identify who is expected to incur the costs, even if the expenses are not known at this time.

- Q. 6 The court is collecting the payments and there is no "integration" or payment reporting portal discussed, only just two copies of the receipt as proof of payment? Payment is then transferred to the court nightly?**

There would need to be multiple interface programming to the State's criminal justice database (CJIS), the State's gateway provider (Govolution) and Child Support's database (Infomatix iAPPROVE API). It would be expected the vendor would develop all programming and deliver the product no later than October 31, 2017 as stated in Section II (Scope of Services), Sub-Section F of the RFP.

As to reporting portals, we requested remote access to all kiosk transaction logs under Section II (Scope of Services), Sub-Section M, item 6.

Q. 7 Is vendor the operator of this solution?

Vendor would be the operator, with special requirements for credit card operations. You would be the gateway and processor for Child Support, but hand off the transactions to the State approved gateway (Govolution) for Department of Correction and Court applications.

Q. 8 RFP state that cash is managed by the operator. Is the same true for checks and credit transactions? If operator is the merchant of record (account holder) for the credit card and check stuff would money need to be collected and transferred out?

Kiosks do not accept check payments at this time. Credit cards are a combination of the vendor being the complete solution, and handing the transaction off to the State approved gateway.

Credit Card transactions handed off to the State approved gateway would not have to be transferred out, as they would process in our accounting system(s). Credit card transactions where vendor is the complete solution would have to be transferred out daily. Check payments are not accepted at this time.

Q. 9 For Cash, the state requires nightly transfers of all cash collected by ACH. The vendor would need to have an account with funds so that it can escrow the cash by ACH. The question is what level of automation does the ACH transfer need and is it XXXXXX's responsibility to trigger this transfer? To me, it seems vendor should collect the night nightly, deposit to the account and transfer the totals once the deposits are done by ACH as a manual process.

There is no requirement on automation of the ACH processing for cash payments. We will provide vendor with an account to transfer the funds to, and leave the inner workings of the process to the vendor. We want to see a daily ACH processing of the cash transactions to our account.

Q. 10 I assume the ACH transfer could encompass payments by check and credit that have cleared if the operator is merchant of record?

Check processing is not accepted at this time. Credit card processing through the State approved gateway will not affect the vendor, but if the vendor is the complete solution for Child Support the funds should transfer nightly.

Q. 11 I assume vendor is supplying the internet gateway? If so can they verify we are isolated by itself on the network as a "payment network" at the site?

The kiosks cannot touch the State network structure. Vendor must develop and maintain a closed circuit that you supply.

Q. 12 Do we know what PCI DSS compliance proof is required? I will have to get this quoted if we need a security company to come and initially assess us and then repeat the assessment later. If we use First Data they supply tools for PCI-SQA and auditing.

There is a PCI attestation your IT security officer should complete at least annually; or if reviewed by an outside company, you should receive a PCI certification of some type. This must be completed at least annually and the attestation/certificate provided to the State for our records.

Q. 13 What merchant account will be used? We are EMV compliant with Chase and First Data. We would need to verify that they are state approved?

The EMV liability for the vendor will depend on the solution used. If you are the sole solution for Child Support then your compliance with either of these banks would be fine. In the case of using the State gateway (Govolution) and processor (EPX), you would have to work with those vendors to certify the EMV security requirements.

Q. 14 I saw 2 documents posted previously, DOC_17043Kiosks_rfp and DOC_17403Kiosks_appB. Since these are not part of the current post on the Delaware Bids site, can I assume those are no longer relevant?

Based on the contract number cited, DOC_17043, this question cannot be answered as these are not Judicial Branch postings. Contact the State's procurement office for further information.

PROFESSIONAL SERVICES AGREEMENT
For
Automated payment kiosks
Contract No. JUD17002-KIOSKS

This Professional Services Agreement ("Agreement") is entered into as of _____, 20__ (Effective Date) and will end on _____, 20__, by and between the State of Delaware, Administrative Office of the Courts, Office of State Court Collections Enforcement ("Delaware"), and _____, (the "Vendor"), with offices at _____.

WHEREAS, Delaware desires to obtain certain services to provide automated payment kiosks for the collection of court-ordered financial assessments; and

WHEREAS, Vendor desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Vendor agree as follows:

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in Appendix __ to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals; and (c) Vendor's response to the request for proposals. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make 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 Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4. Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Contract Term and Payment for Services.

- 2.1. The term of the initial contract shall be from _____, 20__ through _____, 20___. The Contract may be renewed for two (2) one (1) year periods.
- 2.2. Fees for services provided by Vendor will be paid pursuant to a fixed fee schedule ("Fee Schedule") attached hereto as part of Appendix __. The Fee Schedule set forth shall remain in effect for a minimum of _____. The Fee Schedule may be otherwise modified unless agreed to by both parties.
- 2.3. Delaware's obligation to pay Vendor for the performance of services described in Appendix __, Statement of Work will not exceed the fixed fee amount of \$_____. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4. Delaware reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check.
- 2.5. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.6. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.7. All expenses incurred in the performance of the services are to be paid by Vendor.
- 2.8. 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.

2.9. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.

2.10. Invoices shall be submitted to:

3. Responsibilities of Vendor.

3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its approved subcontractors and its principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.

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

3.4. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.5. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

- 3.6. Vendor 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 Delaware or any other political subdivision of Delaware.
- 3.7. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.8. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

- 4.1. A project schedule is included in Appendix ___.
- 4.2. Any delay of services or change in sequence of tasks must be approved in writing by Delaware.
- 4.3. In the event that Vendor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to execute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix ___.

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. Delaware shall assist Vendor in obtaining data applicable to the services to be performed under this Agreement from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.
- 5.4. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.5. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials.

6. Work Product.

- 5.1. All materials and products developed under the Agreement by the Vendor are the sole and exclusive property of Delaware. Vendor will seek written permission to use any

product created under the Agreement. To the extent that Vendor has developed kiosk, web and IVR payment services and software prior to this Agreement, those products and services delivered in the Work Product that have not been developed solely for Delaware will remain the property of the Vendor.

7. Confidential Information.

- 7.1. To the extent permissible under applicable law and the Delaware's courts and judicial agencies *Public Access to Judicial Records* available at <http://courts.delaware.gov/help/recordaccess.aspx>, the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement (hereinafter "Confidential Information").
- 7.2. Vendor will not disclose to any third party any Confidential Information without first obtaining written permission from Delaware. Vendor shall consult with Delaware prior to releasing Confidential Information pursuant to a request for production.
- 7.3. Vendor agrees that the Confidential Information obligation shall survive the termination of this Agreement and that Vendor will not disclose, or allow any of its employees, its agents, or its subcontractors to disclose, to any other person or entity, any Confidential Information received from Delaware.
- 7.4. In addition to the provisions set forth in this section, Vendor shall execute and agree prior to the commencement of any services to be bound by the terms set forth in the Contractor Confidentiality (Non-Disclosure) and Integrity of Data Agreement attached hereto as Appendix ___ and made a part hereof.

8. Warranty.

- 8.1. Vendor warrants that its services provided pursuant to this Agreement will function as designed for a period of no less than one (1) year from the date of system acceptance. Vendor shall correct, as its own expenses, the setup, configuration, customizations or modifications so that all services will function according to Delaware's requirement.

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless the State, 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 negligence or other wrongful conduct of the Vendor, its agents, employees, or approved subcontractors, or
 - b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.
- 9.2. If Delaware promptly notifies Vendor in writing of a third party claim against Delaware that any services provided under this Agreement infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs

or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:

- a. Delaware's misuse or modification of the services delivered under this Agreement;
- b. Delaware's failure to use corrections or enhancements made available by Vendor;
- c. Delaware's use of the services delivered under this Agreement in combination with any product or information not owned or developed by Vendor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the services delivered under this Agreement; or
- e. Information, direction, specification or materials provided by Client or any third party.

9.3. If any services delivered under this Agreement are held to be infringing, Vendor shall at its expense and option either:

- a. Procure the right for Delaware to continue using it,
- b. Replace it with a non-infringing equivalent,
- c. Modify it to make it non-infringing.

The foregoing remedies constitute Delaware's sole and exclusive remedies and Vendor's entire liability with respect to infringement.

10. Employees.

10.1. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3. Possession of a Security Clearance may be required of any employee of Vendor who will be assigned to this project.

11. Independent Contractor.

11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware 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.

11.2. Vendor acknowledges that Vendor and any agents, employees, or approved subcontractors employed by Vendor shall not, under any circumstances, be considered employees of Delaware, 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. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware to Vendor or any of its officers, employees or other agents.

11.3. Vendor shall be responsible for providing liability insurance for its personnel.

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

12. Suspension.

12.1. Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

13. Termination.

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

- a. Not less than 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:

- a. Not less than 20 calendar days written notice of intent to terminate; and

b. An opportunity for consultation with Delaware prior to termination.

13.3. If termination for default is effected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:

a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and

b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.

c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 9.2.

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

13.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6. Gratuities.

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

b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.

c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under 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 permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Approved Subcontracts.

- 15.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void.
- 15.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 15.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for approved subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All approved subcontractors shall adhere to all applicable provisions of this Agreement.
- 15.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor and its approved subcontractor.
- 15.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

16. Force Majeure.

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

17. Non-Appropriation of Funds.

- 17.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.
- 17.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Vendor and all approved subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.*, Chapter 21.

19. Other Licenses

Vendor and all approved subcontractors represent that they are properly licensed as required by 5 *Del C.*, chapters 23 and 32.

20. Complete Agreement.

- 20.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 20.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 20.3. Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

21. Miscellaneous Provisions.

- 21.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and licensure requirements. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 21.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 21.3. 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.
- 21.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- 21.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if it refuses 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 Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

21.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract 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.

21.7. 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 therein.

21.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor's performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22. Insurance.

22.1. Vendor shall maintain the following insurance during the term of this Agreement:

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff 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.
- e. Automotive Property Damage (to others) - \$25,000

22.3. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered to Delaware.

22.4. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Administrative Office of the Courts
Contract # _____
405 North King Street
Suite 507
Wilmington, DE 19801

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

23. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through its approved 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.

24. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of 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 the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

25. Governing Law.

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

26. 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:

DELAWARE:
Administrative Office of the Courts
Attn: _____
405 North King Street
Suite 507
Wilmington, DE 19801

VENDOR:

(Vendor contact address) _____

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
Administrative Office of the Courts**

Witness

Name

Title

Date

VENDOR

Witness

Name

Title

APPENDIX __

1. Scope of Services

Vendor shall provide automated payment kiosks (hereafter “kiosks”) for the collections of court-ordered financial assessments to the Administrative Office of the Courts, Office of State Court Collections Enforcement (hereafter “OSCCE”) within the State of Delaware. OSCCE currently accepts payments for the following financial assessments:

1. Justice of the Peace Court – All criminal and traffic cases
2. Court of Common Pleas – All criminal cases
3. Family Court – All criminal cases
4. Superior Court – All criminal cases
5. Office of State Court Collections Enforcement - Criminal cases transferred to OSCCE for collections from various Judicial agencies
6. Department of Correction – Supervision and Interstate Compact fees
7. Division of Child Support Services – Monthly child support payments and Court ordered purge payments

Future implementations may include, but are not limited to, other judicial branch offices, Division of Motor Vehicles and Health & Social Services agencies.

A. The program shall satisfy the following requirements:

1. A total of six (6) automated payment kiosks installed at the following locations:
 - a. New Castle Probation and Parole Office
26 Parkway Circle
New Castle, DE 19720
 - b. Seaford Probation and Parole Office
Shipley State Service Center
350 Virginia Avenue
Seaford, DE 19973
 - c. Wilmington DMV
2230 Hessler Blvd
New Castle, DE 19720
 - d. Delaware City DMV
2101 Mid County Dr

New Castle, DE 19720

e. Dover DMV
303 Transportation Circle
Dover, DE 19903

f. Georgetown DMV
23737 DuPont Blvd
Georgetown, DE 19947

2. Provide nine (9) additional kiosks, for locations mutually agreed upon by the State and Vendor.
3. **Vendor must have developed the necessary programming by no later than October 31, 2017.**
4. **Hardware implementation must occur by no later than November 1, 2017.**

B. Kiosks

1. Kiosks must be tamper resistant and built to withstand use in a correctional setting.
2. Kiosks must be constructed to withstand public usage in either an interior or exterior location.
3. Kiosk software must be flexible to create workflows that integrate with established Court processing systems and can generate programmable information screens for the end-user. All approved script changes, or information screen updates, must be implemented within the software/kiosks within 48 hours of notification from the State.

C. Payment/Acceptance of Funds

1. Kiosks must be able to accept cash, credit cards, debit cards, stored value cards, and check cards with payment functionality for the end user being consistent for all payment mediums.
2. Kiosks must be able to accept and apply payments to multiple State accounts, including but not limited to, Office of State Court Collections Enforcement, Division of the Child Support Services, Superior Court, Justice of the Peace Court, Court of Common Pleas, Family Court accounts, and Department of Correction Probationary Fees.
3. In the event that the payment processing network is down, thereby limiting the ability to process credit and debit card transactions, kiosks must still be able to accept cash payments where cash payments are allowable by agency guidelines.

4. Kiosks must have an updatable currency acceptor to safeguard against counterfeit funds. In the event a kiosk accepts counterfeit funds, Vendor must guarantee those funds to the State.
5. All cash payments accepted by Vendor must be electronically deposited into an approved State account through ACH on a daily basis.
6. All kiosks will provide 2 receipt copies to the end-user of all approved transactions; paper, printer and supplies will be provided and/or maintained by the vendor.

D. Monitoring

Kiosks must be monitored by Vendor with picture capture and/or visual recording in a method acceptable to the State. State requires on demand reproductions of any transactional periods as requested, delivered within 24 hours of request.

E. Customer Service

1. Vendor must be able to provide customer service to cover end-user inquiries regarding the acceptance of payment through a company kiosk.
2. It is highly desirable that the kiosk have a direct line communication to the Vendor's customer service.
3. The State will provide customer service to cover end-user inquiries regarding the application of paid funds in the State financial system(s).
4. Vendor must provide all pamphlets, literature and handouts to promote the usage of the payment kiosks.
5. Currently the kiosks will be operated in facilities that are accessible during normal business hours, but with future implementations there may be a need for 24/7 customer service capabilities.

F. Languages

Kiosks must offer both English and Spanish language options and should be expandable to include other languages as deemed necessary by the State.

G. Technical/Data

1. Vendor must be able to process all transactions through a secure data server using TLS v1.2 or higher for cryptography as per the recommended PCI DSS (Payment Card Industry Data Security Standards) effective June 15, 2016.

2. Vendor must be certified with the State-approved internet gateway provider (currently Govolution) at no cost to the State. This includes the ability to interface with the gateway provider's suite of products, including virtual terminal applications.
3. Vendor must meet and maintain PCI DSS (Payment Card Industry Data Security Standards) compliance, and must provide annual proof of compliance to the State.
4. Vendor must meet EMV (EuroPay MasterCard Visa) compliance standards or accept EMV liability if not compliant. If not currently compliant with EMV standards, the Vendor shall assume responsibility for any chargebacks or lost funds for the State resulting from non-compliance of EMV standards.
5. Kiosks must be able to capture unique identifying information from end users in a format acceptable to the State.
6. Vendor must be able to provide remote access to all kiosk transaction logs in order to validate inquiries from kiosk end-users and employees of the State. Training on use of remote access must be provided by Vendor.

H. Promotional Materials

Vendor must provide and assist with the dissemination of instructional and promotional materials, which include information on usage and availability of kiosks. Such materials may include pamphlets, materials for the State website, kiosk signage, and other appropriate materials mutually agreed upon by Vendor and the State.

I. Maintenance

1. It will be the responsibility of the Vendor to:
 - a. Install the kiosks at the locations designated by the State, to include transporting, anchoring, and connecting electric and telephone/data wiring. Installation will be coordinated with the State.
 - b. Maintain the kiosks, to include repairing the hardware, upgrading the software, picking up cash, providing armored carrier service, paying for telephone (data transmission) service if necessary, marketing, and any other service (other than electricity) related to day to day operations.
 - c. When a kiosk problem is reported to the Vendor, there will be a 1-4 hour window for the State to receive a response from the Vendor on the handling of the reported problem and a 48 hour repair or replace window.

- d. Provide monthly reporting to the Office of State Court Collections Enforcement detailing the activity of each kiosk, including transaction volume, dollar volume and fees generated.
 - e. Service kiosks, or provide a contractor to service kiosks, including maintaining the general appearance of kiosks, performing maintenance on kiosks, and making any necessary repairs to kiosks.
 - f. Maintain the highest level of accessibility based on a twenty-four (24) hour basis with less than three (3) percent downtime due to Vendor system issues per kiosk.
2. The State will not assume any liability for damage caused to the kiosks through acts of vandalism or by accidents or by any other causes.

J. Records

Vendor must keep records of all transactions for a minimum of five (5) years. State requires on demand reproductions of any transaction(s) as requested, delivered within 24 hours of request.

2. FEE SCHEDULE

APPENDIX __

Contractor Confidentiality (Non-Disclosure) and Integrity of Data Agreement

The Judicial Information Center, Administrative Office of the Courts of the State of Delaware, is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State data will not be modified without the knowledge and written authorization of the Judicial Information Center. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of that data shall be retained by the State of Delaware.

I, as an employee or officer of my firm, when performing work for the Administrative Office of the Courts, understand that I act as an extension of the Judicial Information Center and therefore I am responsible for safeguarding the State's data and computer files as indicated above, as well as outlined by the Department of Technology and Information's Confidentiality (Non-disclosure) and Integrity of Data, available at <http://extranet.dti.state.de.us/pdf/policies/DTIConfidentiality&IntegrityOfDataDTI0065.pdf>. I will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of the Judicial Information Center. Furthermore, I understand that I am to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data. Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may result in prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read this Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I agree to abide by the terms above.

Contractor Signature: _____

Date: _____

Contractor Name: _____