



State of Delaware

Request for Proposal

For

Board of Pension Trustees of the Delaware Public Employees' Retirement System and the Office of Pensions

Professional Services

February 8, 2018

Delaware Public Employees' Retirement System ("DPERS") and Office of Pensions ("OPen") Actuarial Services

by

State of Delaware
Office of Pensions
McArdle Bldg.
860 Silver Lake Blvd., Suite 1

Dover, Delaware 19904

Deadline to Respond: 3:00 p.m. (EST), March 22, 2018

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Board of Pension Trustees of the Delaware Public Employees' Retirement System
RFP for Actuarial and Consulting Services
Contract Number OMB18321-ACTUARY

I. Overview

DPERS Board of Pension Trustees (the "Board") of the Delaware Public Employees' Retirement System (the "System") and the Office of Pensions (Open) seeks proposals to provide actuarial services, actuarial auditing services, and pension benefit consulting for the System. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The System's structure includes total assets of approximately \$10 billion held in a commingled investment pool. The System maintains the following plans and funds:

- State Employees' Pension Plan (29 *Del. C.* §§ 5501-5550)
- The Closed State Police Retirement Fund (11 *Del. C.* §§ 8322-8332)
- The New State Police Retirement Fund (11 *Del. C.* §§ 8322-8396)
- The State Judiciary Retirement Fund, both closed and revised plans (29 *Del. C.* §§ 5600-5620)
- The County and Municipal Employees' Pension Plans (29 *Del. C.* §§ 5551-5555)
- The County and Municipal Police and Firefighters' Pension Plans (11 *Del. C.* §§ 8801-8845)
- The Volunteer Firemen's Pension Plan (16 *Del. C.* §§ 6651-6664)
- The Diamond State Port Corporation Pension Plan (29 *Del. C.* §§ 8780-8789)
- County & Municipal Police and Firefighters' COLA Fund (18 *Del. C.* §§ 701-714)
- Post-Retirement Increase Fund (29 *Del. C.* § 5548)
- Delaware Local Government Retirement Investment Pool (29 *Del. C.* § 8308(L))
- Other Post-Employment Benefits Fund (29 *Del. C.* § 5282-5283)

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: February 8, 2018
Vendor Questions due	Date: March 1, 2018
Answers to Vendor Questions	Date: March 8, 2018
Deadline for Receipt of Proposals	Date: March 22, 2018 at 3:00 PM (EST)
Finalist presentations	Date: April 2018
Notification of Award	Date: May 1, 2018

All Bidders should submit: (1) an original and 8 bound copies of their proposals ("Proposal"), (2) a CD containing the proposal and all attachments and (3) one electronic version to the designated contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 PM EST on March 22,

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2018 ("Closing Date"). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted.

Any Proposal or request for modification received after 3:00 PM EST on the Closing Date is late and will not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Mr. David Craik, Pension Administrator
State of Delaware
Office of Pensions
Actuarial and Consulting RFP
860 Silver Lake Blvd. Suite 1
Dover, DE 19904

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing [ACTUARY]'s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. DPERS reserves the right to deny any and all exceptions taken to the RFP requirements.

II. Scope of Services

A. Nature and Time of Services Required:

1. For each of the 2018, 2019, 2020 plan years (work performed in fiscal years ending June 30th June 30, 2019, 2020, and 2021). The Board reserves the option to extend the contract period for two one-year periods.
2. For all consultation pertaining to the First Plan Year (FY 2018), the Pension Administrator will provide the successful bidder with data from the previous Plan year.

B. Key Dates for Actuarial Valuation Process:

1. July 15th: Data to actuary (Pension Office responsible for meeting this date)
2. August 31st: Information required for completion of Annual Report
3. October 26th: Report to Board of Trustees
4. December 15th: Published actuarial valuations

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C. Type of Services: The actuarial consulting services required by the System fall into the following categories:

1. Regular Services:

- a. Attendance by the ACTUARY at meetings of the Board of Trustees to present the annual actuarial report and upon request for special reports (total visits not to exceed three per year).
- b. Meetings with the Pension Administrator in his/her Office upon request (not to exceed three per year).
- c. Routine consultations with the Pension Administrator by telephone.
- d. Preparation and presentation of the annual actuarial report for nine (9) plans.
- e. Preparation of information required by the System's auditors for preparation of the System's annual report by the last day of August.
- f. Advising the Board with regard to proposed or actual changes that might impact the System arising from legislation (State and Federal) or changes in accounting rules.
- g. Preparation of information required by the System's auditors for preparation of any GASB statements that are required.

2. Special Services: Special services consist of those services that do not occur on an annual basis and those services for which the need may vary greatly from year to year.

- a. Examples: Cost studies of proposed legislation, appearances at legislative committee hearings, in-depth analysis of actuarial assumptions as needed, and attendance at meetings in excess of the maximum specified under Regular Services, and required visits exceeding three per year.
- b. Other Post-Employment Benefits ("OPEB"): preparation and presentation of the annual OPEB actuarial report calculation of actuarial liabilities and associated normal costs.
- c. Actuarial Audit Services: A firm, other than the firm selected as the consulting Actuary, will perform a comprehensive review of the actuarial assumptions and methodology for reasonableness. The review will also include an audit of the most recent actuarial valuation results.

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- d. Separate Fees: All Fees should be separated and presented as outlined in Section III(A)(4)(l-o), below.

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 \$1,000,000.00 per person/\$3,000,000.00 per occurrence.
3. Compliance with Cyber Responsibilities, Liability and Insurance as set forth at Exhibit A.
4. The bidder's response package, at minimum, must include the following:
 - a. Provide the [ACTUARY]'s name, home office address, address of the office providing the services under the contract, and contact numbers for each location.
 - b. Describe the [ACTUARY] generally including size, number of employees, primary business (consulting, pension planning, insurance, etc.), other business or services, type of organization (franchise, corporation, partnership, etc.), and other descriptive material.
 - c. Identify those actuaries who will be assigned to this engagement.
 - d. Provide summary information regarding the professional and experience qualifications of supervising and support actuaries who shall perform work under the contract.
 - e. Identify other personnel who shall be performing work under the contract.
 - f. Describe the computer equipment, programs used and identify as the ownership and location of this equipment which will be utilized in the performance of the contract.

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- g. Identify the availability and location of staff (including actuaries) and other necessary resources for performing all services and providing deliverables within the required key dates (see Section II(B)).
- h. Identify all subcontractors, if any, to be used, the work they will be providing, and their qualifications.
- i. Describe the [ACTUARY]'s ability to perform pricing analyses of proposed legislation, complete with actuarial certificate showing assumptions, pricing base, actuarial implications on the total program, cost, and alternative funding techniques.
- j. List of public employee retirement systems for which the [ACTUARY] currently provides actuarial consulting services. Included in the service performed must be the review of the System's actuarial assumptions and resulting recommendations and the System name, approximate number of participants and number of years the [ACTUARY] has been retained. For three major public employee retirement systems included on the list (each involving 30,000 or more participants), provide the address, telephone number, name and title of person(s) responsible for the administration of the system.
- k. Describe the bidder's understanding of the work to be performed and the time frames associated with the annual evaluation.
- l. Identify the total fixed fee to be charged for the tasks listed in Section II (C)(1) (Regular Services) above in a stand-alone assignment.
- m. Submit the hourly rate for each classification of staff utilized to support Scope of Services (Section II)(c)(2)(a).
- n. Submit the total fixed fee that you will charge for the tasks listed in Section II (C)(2)(b) (OPEB) above in a stand-alone assignment.
- o. Submit the total fixed fee that you will charge for the tasks listed in Section II (C)(2)(c) (Actuarial audit services) above in a stand-alone assignment.
- p. Describe any liability limits that will be proposed as part of the contract negotiations.
- q. Identify and briefly describe any current relationships with any other organization that could create a conflict of interest with services performed for this System.

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- r. Attach examples of Research and Legislative Bulletins provided clients and interested parties on a routine basis.

B. General Evaluation Requirements.

The Evaluation Committee will use quantifiable factors to determine the finalist(s). These finalist(s), in turn, will be invited to make presentations to the Committee during April 2018 in Dover, Delaware. The major factors that will be used in evaluation of the submitted documents are listed under subsection 1 and the additional factor used for evaluation of the presentation component is found under subsection 2.

1. Major Document Factors:
 - a. Format of submitted proposal.
 - b. Understanding of requested proposal.
 - c. Qualifications of personnel assigned.
 - d. Actuary's capabilities.
 - e. Fees.
 - f. Support aspects which include resources, quality control measures, and ability to meet deadlines.
2. Additional Presentation Factor: Quality of presentation.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP: This RFP is available in electronic form only through DPERS, Office of Pensions website at <http://www.delawarepensions.com> and DPERS Procurement website at <http://bids.delaware.gov>.
2. Public Notice: Public notice has been provided in accordance with 29 Del. C. § 6981.

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3. Assistance to bidding Actuaries with a Disability: Bidding Actuaries 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 DPERS. 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 bidding Actuary. Bidding Actuaries should rely only on written statements issued by the RFP designated contact.

Mr. David Craik, Pension Administrator
Office of Pensions
860 Silver Lake Blvd, Suite 1
Dover, DE 19904
david.craik@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 can also be used.

5. Consultants and Legal Counsel: DPERS may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the bidding actuaries' 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 DPERS Designated Contact regarding this RFP is expressly prohibited without prior consent. Bidding actuaries 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 DPERS 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 bidding Actuary who:

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- 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;
- e. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- f. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- g. Has violated ethical standards set out in law or regulation; and
- h. Any other cause listed in regulations of DPERS 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 bidding Actuary 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:
 - a. All RFP documents to be considered must be returned to Mr. David Craik in the Pension Office at 860 Silver Lake Blvd, Suite 1, Dover, Delaware 19904 by 3:00 PM (Eastern Standard Time) on March 22, 2018. Any proposal received after the Submission Deadline will not be considered and will be rejected. The Firm bears all risk of delays in delivery.

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- b. All Proposals shall become the property of OPen upon receipt and are deemed firm offers at that time unless an amended Proposal is submitted prior to the Submission Deadline.

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: DPERS will not pay any costs incurred by any bidding Actuary associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at bidding Actuary'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 June 30, 2018. DPERS 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, bidding Actuary 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: DPERS will receive proposals until the date and time shown in this RFP.
 - a. Proposals will be opened only in the presence of DPERS personnel. Any unopened proposals will be returned to bidding Actuary.

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

8. Non-Conforming Proposals: Non-conforming proposals will not be considered. Nonconforming 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 DPERS.

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9. Concise Proposals: DPERS 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. DPERS's interest is in the quality and responsiveness of the proposal.

10. Realistic Proposals: It is the expectation of DPERS that bidding Actuaries 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. DPERS shall bear no responsibility or increase obligation for a bidding Actuary's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents:
 - a. All documents submitted as part of the bidding Actuary's proposal will be deemed confidential during the evaluation process. Bidding Actuary proposals will not be available for review by anyone other than DPERS/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any bidding Actuary's information to a competing bidding Actuary prior to award of the contract.

 - b. DPERS 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 DPERS's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. bidding Actuary(s) are advised that once a proposal is received by DPERS 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.

 - c. Bidding Actuary(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 bidding Actuary 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.

 - d. Bidding Actuary(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a

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letter from the bidding Actuary'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.

- e. Upon receipt of a proposal accompanied by such a separate, sealed envelope, DPERS will open the envelope to determine whether the procedure described above has been followed.
12. Multi-bidding Actuary Solutions (Joint Ventures): Multi-bidding Actuary solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "prime contractor". The "prime contractor" must be the joint venture's contact point for DPERS and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all bidding Actuary's systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal.
- a. Services specified in the proposal shall not be subcontracted without prior written approval by DPERS, and approval of a request to subcontract shall not in any way relieve bidding Actuary of responsibility for the professional and technical accuracy and adequacy of the work.
 - b. Further, bidding Actuary shall be and remain liable for all damages to DPERS caused by negligent performance or non-performance of work by its subcontractor or its subsubcontractor.
 - c. Multi-bidding Actuary proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each bidding Actuary.
 - d. Primary bidding Actuary:
 - i. DPERS expects to negotiate and contract with only one "prime bidding Actuary". DPERS will not accept any proposals that reflect an equal teaming arrangement or from bidding Actuaries who are co-bidding on this RFP. The prime bidding Actuary will be responsible for the management of all subcontractors.
 - ii. Any contract that may result from this RFP shall specify that the prime bidding Actuary is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the

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awarded bidding Actuary. Payments to any-subcontractors are the sole responsibility of the prime bidding Actuary (awarded bidding Actuary).

- e. Sub-Contracting: The bidding Actuary selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, bidding Actuaries assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor. Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime bidding Actuary shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.
13. Multiple Proposals: A primary bidding Actuary may not participate in more than one proposal in any form. Sub-contracting bidding Actuaries may participate in multiple joint venture proposals.
14. Discrepancies and Omissions: Bidding Actuary 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 bidding Actuary.
- a. Should bidding Actuary find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, bidding Actuary shall notify DPERS's Designated Contact, in writing via email 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 bidding Actuary's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.
- b. 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 via email, no later than ten (10) calendar days prior to the time set for opening of the proposals.

C. RFP Question and Answer Process.

1. Clarifications: DPERS will allow written requests for clarification of the RFP. All questions should be sent to Mr. David Craik at david.craik@state.de.us and are due at 3:00 PM EST on March 1, 2018. The questions will be consolidated into a single set of responses and posted on the State's website at <http://bids.delaware.gov> and

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<http://www.delawarepensions.com> by the date of March 8, 2018. Bidding actuaries' names will be removed from questions in the responses released.

a. Questions should be submitted in the following format. Deviations from this format will not be accepted.

- i. Section number ii.
- Paragraph number iii.
- Page number
- iv. Text of passage being questioned v.
- Question

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

2. State's Right to Reject Proposals: DPERS 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 DPERS's specifications or bidding Actuary'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 DPERS may deem necessary in the best interest of DPERS.
3. State's Right to Cancel Solicitation: DPERS reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. DPERS makes no commitments expressed or implied, that this process will result in a business transaction with any bidding Actuary. This RFP does not constitute an offer by DPERS. Bidding Actuary's participation in this process may result in DPERS 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 DPERS to execute a contract nor to continue negotiations. DPERS may terminate negotiations at any time and for any reason, or for no reason.
4. State's Right to Award Multiple Source Contracting: Pursuant to 29 *Del. C.* § 6986, DPERS may award a contract for a particular professional service to two or more bidding actuaries' if the agency head makes a determination that such an award is in the best interest of DPERS.
5. Notification of Withdrawal of Proposal: Bidding Actuary may modify or withdraw its proposal by written request, provided that both proposal and request is received by DPERS 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

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DPERS at the proposal submission deadline. All proposals received are considered [ACTUARY] offers at that time.

6. Revisions to the RFP: If it becomes necessary to revise any part of the RFP, an addendum will be posted on DPERS's website at <http://bids.delaware.gov>. DPERS is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.
7. Exceptions to the RFP: Any exceptions to the RFP, or DPERS's terms and conditions, should be provided in writing to the Designated Contact. Acceptance of exceptions is within the sole discretion of the evaluation committee.

D. RFP Evaluation Process:

1. Proposal Evaluation Committee:
 - a. The Proposal Evaluation Committee (the "Committee") shall be comprised of Mr. David, Craik, Pension Administrator, the Board's Deputy Attorney General, and representatives appointed by the Board of Pension Trustees of the Delaware Public Employees' Retirement System. The Committee will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected. DPERS reserves full discretion to determine the competence and responsibility, professionally and/or financially, of bidding Actuaries'. Bidding Actuaries' are to provide in a timely manner any and all information that DPERS may deem necessary to make a decision.
 - i. The Committee shall determine which bidding actuaries meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in *29 Del. C. §§ 6981 and 6982*.
 - ii. The Committee may negotiate with one or more bidding actuaries during the same period and may, at its discretion, terminate negotiations with any or all bidding actuaries.
 - iii. The Committee shall make a recommendation regarding the award to the Board of Pension Trustees, who shall have final authority, subject to the provisions of this RFP and *29 Del. C. § 6982*, to award a contract to the successful bidding Actuary in the best interests of DPERS.

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2. Proposal Selection Criteria:

- a. The Committee shall assign up to the maximum number of points for each Evaluation Item to each of the proposing bidding Actuary's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Committee.
- b. 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 DPERS to be essential for use by the Committee 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 Committee'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 Committee.
- c. The Committee reserves the right to:
 - i. Select for contract or for negotiations a proposal other than that with lowest costs.
 - ii. 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.
 - iii. Waive or modify any information, irregularity, or inconsistency in proposals received.
 - iv. Request modification to proposals from any or all bidding actuaries during the contract review and negotiation.
 - v. Negotiate any aspect of the proposal with any bidding Actuary and negotiate with more than one bidding Actuary at the same time.
 - vi. Select more than one bidding Actuary pursuant to 29 Del. C. § 6986.

3. 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:

Criteria	Weight
Prior experience with OPen or references	15

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Qualifications to perform the services	25
Staffing experience, expertise, and education	15
Sufficient staff assigned	15
Responses to the Proposal Content	15
Criteria	Weight
Fees	15
Total	100%

4. Proposal Clarification: The Evaluation Committee may contact any bidding Actuary 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.

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

6. Oral Presentations: Selected bidding actuaries may be invited to make oral presentations to the Evaluation Committee. The bidding Actuary 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 bidding Actuary's costs associated with participation in oral discussions and system demonstrations conducted for DPERS are the bidding Actuary's responsibility.

E. Award of Contract and Notice:

1. The final award of a contract is subject to approval by DPERS. DPERS has the sole right to select the successful bidding Actuary(s) for award, to reject any proposal as unsatisfactory or nonresponsive, 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.

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2. After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, DPERS will award the contract. The contract shall be awarded to the bidding Actuary whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

3. Acceptance of bidding Actuary proposal by Open and DPERS shall be made in writing, and DPERS and the winning bidding Actuary will be invited to negotiate a contract with DPERS. The final fully executed written contract will constitute the contract, and no bidding Actuary will acquire any legal or equitable rights or privileges until the occurrence of both such events.

4. DPERS is not obligated to award the contract to the bidding Actuary who submits the lowest bid of the bidding Actuary who receives the highest total point score, rather the contract will be awarded to the bidding Actuary whose proposal is the most advantageous to DPERS. The award is subject to the appropriate State of Delaware approvals.

5. Remaining bidding Actuaries' will be notified in writing of their selection status.

F. Contract Terms and Conditions

1. General Information:

- a. The term of the contract between the successful bidder and the State shall be for three (3) years with two (2) extensions for a period of one (1) year for each extension.
- b. The selected bidding Actuary will be required to enter into a written agreement with DPERS. A proposed form of contract is attached at **Exhibit B**.
- c. DPERS 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 DPERS. Bidding actuaries will be required to sign the contract for all services, and may be required to sign additional agreements.
- d. The selected bidding Actuary or bidding actuaries will be expected to enter negotiations with DPERS, which will result in a formal contract between parties. This RFP and the selected bidding Actuary's response to this RFP will be incorporated as part of any formal contract.

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- e. DPERS's standard contract will most likely be supplemented with the bidding Actuary's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
 - f. The successful bidding Actuary shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No bidding Actuary 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 DPERS 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 bidding Actuary.
 - g. If the bidding Actuary 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 bidding Actuary. Such bidding Actuary 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 bidding Actuary(s) and prospective bidding Actuary(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such bidding Actuary(s) void. By responding to this RFP, the bidding Actuary shall be deemed to have represented and warranted that its proposal is not made in connection with any competing bidding Actuary submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the bidding Actuary did not participate in the RFP development process at DPERS and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of DPERS participated directly or indirectly in the bidding Actuary's proposal preparation. Advance knowledge of information which gives any particular bidding Actuary advantages over any other interested bidding Actuary(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. Bidding actuaries found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of DPERS 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 Bidding Actuary 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

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commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, DPERS 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 DPERS 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:

- a. Until contract award, bidding actuaries shall not, directly or indirectly, solicit any employee of DPERS to leave DPERS's employ in order to accept employment with the bidding Actuary, its affiliates, actual or prospective contractors, or any person acting in concert with bidding Actuary, without prior written approval of DPERS's contracting officer. Solicitation of DPERS and/or OPen employees by a bidding Actuary may result in rejection of the bidding Actuary's proposal.
- b. This paragraph does not prevent the employment by a bidding Actuary of a State of Delaware employee who has initiated contact with the bidding Actuary. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Bidding actuaries may not knowingly employ a person who cannot legally accept employment under state or federal law. If a bidding Actuary discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms:

- a. Independent contractor- 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.
- b. Location of work for the contractual support personnel during the project period shall be determined at DPERS' discretion. DPERS shall provide working space and sufficient supplies and material to augment the Contractor's services.

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- c. 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.
- d. Licenses and Permits: In performance of the contract, the bidding Actuary will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations.
- i. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful bidding Actuary. The bidding Actuary shall be properly licensed and authorized to transact business in DPERS as provided in 30 Del. C. § 2502. Prior to receiving an award, the successful bidding Actuary shall either furnish DPERS with proof of State of Delaware Business Licensure or initiate the process of application where required.
 - ii. 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.
 - iii. Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with DPERS licensing requirements may subject bidding Actuary to applicable fines and/or interest penalties.
- e. Notice: Any notice to DPERS required under the contract shall be sent by registered mail to:
- Mr. David Craik
Pension Administrator
Office of Pensions
860 Silver Lake Blvd Suite
1, Dover, DE 19904.
- f. Indemnification:
- i. General: By submitting a proposal, the proposing bidding Actuary agrees that in the event it is awarded a contract, it shall indemnify and hold harmless DPERS, the Board of Trustees, the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs

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and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of bidding Actuary its agents or employees, regardless of whether such suits, actions claims or liabilities assert acts or failures to act which are attributable, in whole or in part, to DPERS, the Board of Trustees, the State, its employees or agents, or (B) bidding Actuary's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) bidding Actuary shall have been notified promptly in writing by DPERS of any notice of such claim; and (ii) bidding Actuary shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

- ii. **Proprietary Rights Indemnification:** Bidding Actuary 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 DPERS, DPERS shall promptly notify the bidding actuary in writing and bidding actuary shall defend such claim, suit or action at bidding Actuary's expense, and bidding actuary shall indemnify DPERS 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 bidding actuary (collectively ""Products") is or in bidding actuary's reasonable judgment is likely to be, held to constitute an infringing product, bidding actuary shall at its expense and option either: (i) Procure the right for DPERS to continue using the Product(s);(ii) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or (iii) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that DPERS agrees to and accepts in writing.

- g. **Insurance:** The bidding Actuary **shall provide a certificate of insurance** as proof that the bidding Actuary has the required insurance, as further provided below:

- i. The bidding Actuary 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

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any nature, arising out of the bidding Actuary'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 bidding Actuary in their negligent performance under this contract. ii. The bidding Actuary 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 bidding Actuary is an independent contractor and is not an employee of DPERS.

iii. During the term of this contract, the bidding Actuary shall, at its own expense, carry insurance minimum limits as follows:

	Comprehensive General Liability	\$1,000,000 per person and \$3,000,000 per occurrence
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And, depending upon the services provided, at least one of the following:

	Medical or Professional Liability	\$1,000,000/\$3,000,000
	Misc. Errors and Omissions	\$1,000,000/\$3,000,000
	Product Liability	\$1,000,000/\$3,000,000

iv. If the contractual service requires the transportation of departmental clients or staff, the bidding Actuary shall, in addition to the above coverage's, secure at its own expense the following coverage:

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

v. Cyber Liabilities insurance, if required, as per **Exhibit A**.

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- h. Performance Requirements: The selected bidding Actuary 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.
- i. Warranty: The bidding Actuary will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the bidding Actuary correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.
- j. Costs and Payment Schedules: All contract costs must be as detailed specifically in the bidding Actuary's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of DPERS. The proposal costs shall include full compensation for all taxes that the selected bidding Actuary is required to pay. DPERS will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. DPERS may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).
- k. Penalties: DPERS may include in the final contract penalty provisions for nonperformance, such as liquidated damages.
- l. Termination:
 - i. Termination for Cause: If for any reasons, or through any cause, the bidding Actuary fails to fulfil in timely and proper manner his obligations under the contract, or if the bidding Actuary violates any of the covenants, agreements or stipulations of the contract, DPERS shall thereupon have the right to terminate the contract by giving written notice to the bidding Actuary 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 bidding Actuary under the contract shall, at the option of DPERS, become its property, and the bidding Actuary shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to DPERS.

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- ii. Termination for Convenience: DPERS 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 bidding Actuary under the contract shall, at the option of DPERS, become its property, and the bidding Actuary shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to DPERS. If the contract is terminated by DPERS as so provided, the bidding Actuary 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 bidding Actuary as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the bidding Actuary shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the bidding Actuary during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

- m. Non-discrimination: In performing the services subject to this RFP the bidding Actuary 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 bidding Actuary 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.

- n. Covenant against Contingent Fees: The successful bidding Actuary 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 bidding Actuary for the purpose of securing business. For breach or violation of this warranty DPERS 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.

- o. Bidding Actuary Activity: No activity is to be executed in an off shore facility, either by a subcontracted [ACTUARY] or a foreign office or division of the bidding Actuary. The bidding Actuary must attest to the fact that no activity will take place

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outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

- p. Work Product: All materials and products developed under the executed contract by the bidding Actuary are the sole and exclusive property of the State. The bidding Actuary will seek written permission to use any product created under the contract.

- q. Contract Documents: The RFP, the purchase order, the executed contract and any supplemental documents between DPERS and the successful bidding Actuary shall constitute the contract between DPERS and the bidding Actuary. 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, bidding Actuary's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between DPERS and the bidding Actuary.

- r. Applicable Law: The laws of DPERS shall apply, except where Federal Law has precedence. The successful bidding Actuary consents to jurisdiction and venue in DPERS. In submitting a proposal, bidding actuaries certify that they comply with all federal, state and local laws applicable to its activities and obligations including:
 - i. the laws of the State of Delaware; ii. the applicable portion of the Federal Civil Rights Act of 1964; iii. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
 - iv. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
 - v. 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.
 - vi. DPERS reserves the right to disregard the proposal, terminate the contract, or declare the bidding Actuary to be in default of the contract for failure to comply with (i) through (v) above.
 - vii. The selected bidding Actuary 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.

- s. 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

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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.

- t. Additional Terms and Conditions: DPERS reserves the right to add terms and conditions during the contract negotiations
- u. Status Reporting: The selected bidding Actuary will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- v. Changes: No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of DPERS.

G. Miscellaneous:

- 1. Press Releases or Public Disclosure: Bidding Actuaries may not release any information about this RFP. DPERS reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to DPERS 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 DPERS.
- 2. Definitions of Requirements: The words shall, will and/or must are used to designate a mandatory requirement. Bidding Actuaries must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

EXHIBIT A

DPERS/ACTUARY RFP CYBER RESPONSIBILITIES, LIABILITY, AND INSURANCE

The [ACTUARY] shall comply with all Delaware Department of Technology and Information (“DTI”) security standards identified in this Request for Proposals (“RFP”) and any subsequent contract(s). All capitalized terms not otherwise defined in this document shall have the meaning set forth in the **DPERS/ACTUARY RFP**.

I. DEFINITIONS

A. Covered Data Loss: The loss of Customer Data that is not attributable to the instructions, acts or omissions of Delaware, DPERS, OPen or its users or within the published recovery point objective for the Services.

B. Covered Disclosure: The disclosure of Customer Data as a result of a Security Incident.

C. Customer Data: All data including all text, sound, software, or image files provided to the [ACTUARY] by, or on behalf of the State of Delaware, DPERS, or OPen which is occasioned by or arises out of the operations, obligations, and responsibilities set forth in this contract.

D. Customer Data Breach:

1. Compromise of the security, confidentiality, or integrity of, or the loss of, computerized data for DPERS and/or OPen that results in, or there is a reasonable basis to conclude has resulted in the unauthorized acquisition of personally identifiable information (PII); or access to PII that is for an unauthorized purpose, or in excess of authorization.

2. Customer Data Breach does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

E. Personally Identifiable Information (“PII”): All Customer Data provided to or otherwise obtained by ACTUARY in conjunction with the RFP and subsequent contract which includes, but is not limited to:

1. Information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique

identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and

2. Information or data that meets the definition ascribed to the term "Nonpublic Personal Information" of the Gramm-Leach-Bliley Act (15 U.S.C. § 6809(4)) or "Personal Information" pursuant to 6 Del. C. § 12B-101(4), or any other applicable law of the State of Delaware.

F. Security Incident: Any unauthorized access to any Customer Data maintained, stored, or transmitted by Delaware or a third party on behalf of Delaware.

II. RESPONSIBILITIES OF [ACTUARY] IN THE EVENT OF DATA BREACH

A. Compliance: The Actuary is required to comply with applicable security-related Federal, State, and Local laws. Actuary and Actuary staff shall enter into the confidentiality agreements in the form provided in **Schedules 1 and 2** to this Exhibit A.

B. Notice:

1. The [ACTUARY] shall notify DTI, and OPen immediately of any known Customer Data Breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.

2. All notices referenced herein shall be to:

Department of Technology and Information:
Elayne Starkey, Chief Security Officer
elayne.starkey@state.de.us; 302-739-9631

Office of Pensions
David Craik, Pension Administrator
david.craik@state.de.us; 302-739-4208

C. Corrective Action for Customer Data Breach:

1. Upon the determination by DTI, DPERS, OPen and/or the [ACTUARY] that a Customer Data Breach has occurred, the [ACTUARY] will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the Customer Data Breach and shall implement corrective action as determined appropriate by the [ACTUARY], DTI, and OPen.

2. Any corrective action resulting from Section B.1. above which requires restricted, altered, or severed access to electronic data shall be subject to final approval by DTI and OPen.
3. In the event of an emergency, the [ACTUARY] may take reasonable corrective action to address the emergency. In such instances, the corrective action will not be considered final until approved by DTI and OPen.
4. For any Customer Data Breach arising from [ACTUARY]'s use that includes a breach of PII, the [ACTUARY] shall:
 - a) Notify in a form acceptable to DPERS, any affected individual as may be required by 6 Del. C. § 12B-101 of the Delaware Code.
 - b) Provide a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach.
 - c) Meet and confer with representatives of DTI and OPen regarding required remedial action in relation to any such data breach without unreasonable delay.
 - d) Bear all costs associated with the investigation, response and recovery from the breach, such as 3-year credit monitoring services, mailing costs, website, and toll free telephone call center services.

D. No Limitation of Liability for Certain Data Breaches: Notwithstanding any other provision of this RFP and/or contract, there shall be no monetary limitation of [ACTUARY]'s liability for the [ACTUARY]'s breach of its obligations under this contract which proximately causes a (1) Covered Data Loss or (2) Covered Disclosure, where such Covered Data Loss or Covered Disclosure results in any unauthorized public dissemination of PII.

III. Cyber Liability Insurance

A. DTI Cloud and Hosting Policy: An awarded [ACTUARY] unable to meet the DTI Cloud and Offsite Hosting Policy requirement of encrypting PII at rest shall, prior to execution of a contract, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded [ACTUARY] shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s).

B. Levels of Cyber Liability Insurance: Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. **The level applicable to this contract is: Level 3.** Should the actual number of PII records exceed the anticipated number, it is the [ACTUARY]'s responsibility to ensure that sufficient coverage is obtained (see table below). In the event that the [ACTUARY] fails to obtain sufficient coverage, [ACTUARY] shall be liable to cover damages up to the required coverage amount.

Level	Number of PII records	Level of cyber liability insurance required (occurrence = data breach)
1	1 – 10,000	\$2,000,000 per occurrence
2	10,001 – 50,000	\$3,000,000 per occurrence
3	50,001 – 100,000	\$4,000,000 per occurrence
4	100,001 – 500,000	\$15,000,000 per occurrence
5	500,001 – 1,000,000	\$30,000,000 per occurrence
	1,000,001 – 10,000,000	\$100,000,000 per occurrence

Schedule 1 to Exhibit A-DPERS/Actuary RFP

Confidentiality and Non-Disclosure Agreement for Contracted [ACTUARY]

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is entered into as of [DATE] (“the Effective Date”) by and between the Delaware, Board of Pension Trustees, Office of Pensions (the “OPen”), 860 Silver Lake Blvd., McArdle Building, Suite 1, Dover, Delaware 19904 and [[ACTUARY] NAME] (the “[ACTUARY]”), a Delaware [ENTITY TYPE (e.g. limited liability partnership)] with its place of business located at [[ACTUARY] ADDRESS] (collectively the “Parties”).

WHEREAS, DPERS is the public pension system of the State of Delaware (the “State”), and authorized pursuant to 29 Del. C. Ch 83, administered by OPen; and

WHEREAS, OPen and the [ACTUARY] have entered into a Professional Services Agreement (the “Agreement”) dated [DATE] and captioned as OPen contract number [XX--XX], under which [ACTUARY] will provide [SERVICE] for OPen (the “Engagement”);

WHEREAS, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Agreement;

WHEREAS, during the course of and in conjunction with the [ACTUARY]’s performance of its duties under the Engagement in accordance with the Agreement, the [ACTUARY] will have access to and possession of certain State of Delaware (“State”) data, information and documents that OPen deems to be highly confidential, the unauthorized disclosure of which could expose OPen and DPERS to significant legal liability.

WHEREAS, OPen desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the [ACTUARY] desires to provide such assurance and protections to OPen on the terms set forth herein; and

WHEREAS, OPen and the [ACTUARY] represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, OPen and the [ACTUARY] agree as follows:

1. As used herein, the following terms shall have the following meanings:
 - a. “Confidential Information” includes, with limitation, tax returns and related information, employment and employee performance records and any related

documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of OPen or otherwise obtained by or provided to the [ACTUARY] in conjunction with the Engagement.

b. "Customer Data" includes all data including all text, sound, software, or image files provided to the [ACTUARY] by, or on behalf of the State of Delaware, DPERS, or OPen which is occasioned by or arises out of the operations, obligations, and responsibilities set forth in this contract

c. "Proprietary Information" includes, without limitation, request for quotes, cost or pricing data, government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of a system, application, network and access information, in the possession of DPERS or otherwise obtained by or provided to the [ACTUARY] in conjunction with the Engagement.

c. Personally identifiable information ("PII"), in the possession of OPen or otherwise obtained by or provided to the [ACTUARY] in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term "Nonpublic Personal Information" of the Gramm-Leach-Bliley Act (15 U.S.C. § 6809(4)) or "Personal Information" pursuant to 6 *Del. C.* § 12B-101(4), or any other applicable law of the State of Delaware.

d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as "Protected Information."

2. DPERS shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by DPERS in conjunction with the Engagement, regardless of format. The [ACTUARY] acknowledges and agrees that the [ACTUARY] shall have no right, title, or interest in such data and information. Further, the [ACTUARY] shall not access State user accounts or State data, except as required or permitted by the express terms of the Agreement or any otherwise permitted in writing by OPen.

3. OPen agrees to specifically identify Protected Information in writing as confidential prior to providing to the [ACTUARY] and strictly limit provision of Protected

Information to that which is essential to the [ACTUARY]'s performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, OPEN shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to the [ACTUARY]. The [ACTUARY] shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, the [ACTUARY] shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:

- a. PII obtained by the [ACTUARY] is and shall remain property of DPERS.
 - b. At no time shall any Protected Information or any other data or processes which either belongs to or are intended for the use of DPERS or its officers, agents, or employees, be copied, disclosed, or retained by the [ACTUARY] or any employee of the [ACTUARY] for subsequent use in any transaction that does not involve the Engagement.
 - c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Agreement.
 - d. Protected Information shall be safeguarded by the [ACTUARY] from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the [ACTUARY] for safeguarding the [ACTUARY]'s own confidential information.
 - e. The [ACTUARY]'s desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.
 - f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Agreement.
 - g. All State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
4. No DPERS or State data, including Protected Information, shall be stored or transferred outside of the United States by the [ACTUARY] except to the extent permitted in the Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.

5. The [ACTUARY] shall not disclose any Protected Information to any person or entity except to the extent the [ACTUARY] is permitted to disclose such information as provided in this Confidentiality Agreement or the Agreement.

6. To the extent applicable, the [ACTUARY] understands and acknowledges its responsibilities under 6 *Del. C. Ch. 12B* ("Computer Security Breach"). The [ACTUARY] further understands and acknowledges the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. The [ACTUARY] further acknowledges that 6 *Del. C. § 12B-104* sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.

7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, the [ACTUARY] shall disclose to the [ACTUARY] engagement partner and to OPen, in writing, the occurrence of such breach or intrusion and, to the extent the [ACTUARY] is aware, the assets that might have been breached or disclosed.

8. The [ACTUARY] is bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. The [ACTUARY] further understands that DPERS may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality Agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C. § 368*) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C. § 1113*); Delaware Department of Labor confidentiality statute (19 *Del. C. § 3125*); Delaware Department of Technology and Information Internal Policy on Confidentiality

(Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C. § 305*); Health Insurance Portability and Accountability Act and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to Protected Information.

9. The [ACTUARY] understands that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. The [ACTUARY] understands that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the [ACTUARY] staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.

10. Without limitation of additional legal bases, pursuant to DPERS of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) DPERS of Delaware is not at all permitted to agree to indemnify the [ACTUARY], directly or indirectly.

11. The [ACTUARY] understands that it shall promptly contact OPen, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, except to the extent required by law, the [ACTUARY] shall not respond to subpoenas, service of process, and other legal requests related to DPERS without first notifying OPen, in writing, unless prohibited by law from providing such notice.

12. The [ACTUARY] understands that it and its employees may be subject to clearance through DPERS's Security Clearance Program prior to the review of any State data.

13. The [ACTUARY] agrees to safeguard any password or security codes provided to it and its employees during the course of the Engagement.

14. The [ACTUARY] agree to follow its security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.

15. The [ACTUARY] understands that it and its employees may be liable for any losses experienced by OPen or DPERS or any remediation costs to the extent required by law associated with a breach and that OPen and/or DPERS will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.

16. The [ACTUARY] understands that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Agreement and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records in accord with professional standards, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to OPen upon request.

17. The obligations imposed herein do not extend to information or data which:

a. is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the [ACTUARY];

b. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;

c. is determined to have been developed by the [ACTUARY] independently of disclosures made hereunder; or

d. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.

18. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Agreement, the terms of this Confidentiality Agreement shall control.

19. The [ACTUARY]'s signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by OPEN.

[[ACTUARY] NAME] (The "[ACTUARY]"):

Printed Name: _____

Position: _____

Signature & Date: _____

[NOT TO BE COMPLETED UNTIL THE
CONTRACT HAS BEEN AWARDED]

Schedule 2 to Exhibit A-DPERS/Actuary RFP

Confidentiality and Non-Disclosure Agreement for Individual Actuary Staff

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is entered into as of [DATE] (“the Effective Date”) by and between the Delaware, Board of Pension Trustees, Office of Pensions (the “OPen”), 860 Silver Lake Blvd., McArdle Building, Suite 1, Dover, Delaware 199014 and [EMPLOYEE NAME] , employee of [[ACTUARY] NAME] (the “[ACTUARY]”), a Delaware [ENTITY TYPE (e.g. limited liability partnership)] with its place of business located at [[ACTUARY] ADDRESS] (collectively the “Parties”).

WHEREAS, DPERS is the public pension system of the State of Delaware (the “State”), and authorized pursuant to 29 Del. C. Ch 83, administered by OPen; and

WHEREAS, OPen and the [ACTUARY] have entered into a Professional Services Agreement (the “Agreement”) dated [DATE] and captioned as OPEN contract number XX--XX , under which [ACTUARY] will provide [SERVICE] for OPen (the “Engagement”);

WHEREAS, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Agreement;

WHEREAS, during the course of and in conjunction with the [ACTUARY]’s performance of its duties under the Engagement in accordance with the Agreement, the [ACTUARY] will have access to and possession of certain State of Delaware (“State”) data, information and documents that OPen deems to be highly confidential, the unauthorized disclosure of which could expose OPen and DPERS to significant legal liability.

WHEREAS, OPen desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the [ACTUARY] desires to provide such assurance and protections to OPen on the terms set forth herein; and

WHEREAS, OPen and the [ACTUARY] represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, OPen and [ACTUARY] agree as follow:

1. As used herein, the following terms shall have the following meanings:
 - a. “Confidential Information” includes, with limitation, tax returns and related information, employment and employee performance records and any related

documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of OPen or otherwise obtained by or provided to the [ACTUARY] in conjunction with the Engagement.

b. "Customer Data" includes all data including all text, sound, software, or image files provided to the [ACTUARY] by, or on behalf of the State of Delaware, DPERS, or OPen which is occasioned by or arises out of the operations, obligations, and responsibilities set forth in this contract

c. "Proprietary Information" includes, without limitation, request for quotes, cost or pricing data, government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of a system, application, network and access information, in the possession of DPERS or otherwise obtained by or provided to the [ACTUARY] in conjunction with the Engagement.

d. Personally identifiable information ("PII"), in the possession of OPen or otherwise obtained by or provided to the [ACTUARY] in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term "Nonpublic Personal Information" of the Gramm-Leach-Bliley Act (15 U.S.C. § 6809(4)) or "Personal Information" pursuant to 6 *Del. C.* § 12B-101(4), or any other applicable law of the State of Delaware.

e. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as "Protected Information."

2. DPERS shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by DPERS in conjunction with the Engagement, regardless of format. I acknowledge and agree that I shall have no right, title, or interest in such data and information. Further, I shall not access State user accounts or State data, except as required or permitted by the express terms of the Agreement or any otherwise permitted in writing by OPen.

3. OPen agrees to specifically identify Protected Information in writing as confidential prior to providing to me and strictly limit provision of Protected Information to that

which is essential to the [ACTUARY]'s performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, OPEN shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to me. I shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, I shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:

- a. PII obtained by me is and shall remain property of DPERS.
 - b. At no time shall any Protected Information or any other data or processes which either belongs to or are intended for the use of DPERS or its officers, agents, or employees, be copied, disclosed, or retained by me for subsequent use in any transaction that does not involve the Engagement.
 - c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Agreement.
 - d. Protected Information shall be safeguarded by me from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the [ACTUARY] for safeguarding the [ACTUARY]'s own confidential information.
 - e. The [ACTUARY]'s desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.
 - f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Agreement.
 - g. All State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
4. No State data, including Protected Information, shall be stored or transferred outside of the United States by me except to the extent permitted in the Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.
 5. I shall not disclose any Protected Information to any person or entity except to the extent the [ACTUARY] is permitted to disclose such information as provided in this Confidentiality Agreement or the Agreement.

6. To the extent applicable, I understand and acknowledge my responsibilities under 6 *Del. C.* Ch. 12B (“Computer Security Breach”) and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. I further acknowledge that 6 *Del. C.* § 12B-104 sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.

7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, I shall disclose to the [ACTUARY] engagement partner and to OPen, in writing, the occurrence of such breach or intrusion and, to the extent I am aware, the assets that might have been breached or disclosed.

8. I am bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. I further understand that DPERS may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality Agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.* § 305); Health Insurance Portability and Accountability Act and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to Protected Information.

9. I understand that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. I understand that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the [ACTUARY] staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.

10. Without limitation of additional legal bases, pursuant to DPERS of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) DPERS of Delaware is not at all permitted to agree to indemnify me or the [ACTUARY], directly or indirectly.

11. I understand that I shall promptly contact the [ACTUARY] engagement partner and OPen, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, except to the extent

required by law, I shall not respond to subpoenas, service of process, and other legal requests related to DPERS without first notifying the [ACTUARY] engagement partner and OPen, in writing, unless prohibited by law from providing such notice.

12. I understand that I may be subject to clearance through DPERS's Security Clearance Program prior to the review of any State data.

13. I agree to safeguard any password or security codes provided to me during the course of the Engagement.

14. I agree to follow the [ACTUARY]'s security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.

15. I understand the [ACTUARY] and I may be liable for any losses experienced by DPERS or any remediation costs to the extent required by law associated with a breach and that DPERS will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.

16. I understand that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Agreement and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records in accord with professional standards, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to OPen upon request.

17. The obligations imposed herein do not extend to information or data which:

- a. is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the [ACTUARY];
- b. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
- c. is determined to have been developed by the [ACTUARY] independently of disclosures made hereunder; or
- d. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.

18. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Agreement, the terms of this Confidentiality Agreement shall control.

My signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by OPen.

Individual Actuary Staff:

Printed Name: _____

[NOT TO BE COMPLETED UNTIL THE
CONTRACT HAS BEEN AWARDED]

Position: _____

Signature & Date:

EXHIBIT B

FORM OF ACTUARIAL AND CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is effective as of the _____ by and between the Delaware Public Employees' Retirement System ("DPERS"), with offices at Office of Pensions, 860 Silver Lake Boulevard, Suite 1, Dover, DE 19904, and [ACTUARY], Inc. ("[ACTUARY]") with offices at 8200 Greensboro Drive, Suite 1125, McLean, VA 22102.

WHEREAS, DPERS is the public pension system of the State of Delaware (the "State"), and authorized pursuant to 29 Del. C. Ch 83, and

WHEREAS, _____ is a financial and actuarial consulting corporation organized under the laws of _____; and

WHEREAS, the Board of Trustees of DPERS has selected _____ to provide independent financial and actuarial consulting services to DPERS; and

WHEREAS, DPERS and _____ 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, DPERS and _____ agree as follows:

1. Term.

- a. DPERS will retain [ACTUARY], and [ACTUARY] will accept such retention, commencing as of the 1st day of July, 2018, for a period of three (3) years and continuing for two (2) additional one year terms at the mutual written consent of both parties.

2. Services and Compensation.

- a. DPERS will pay _____ a monthly retainer for actuarial and financial consulting services as set forth in DPERS Statement of Work and Fees at Attachment A to this Agreement. These fees described in Exhibit A are expected to increase by inflation each year thereafter. Fee increases will only be effective upon the written agreement of both parties.
- b. With respect to special consulting projects, [ACTUARY] will bill such requests, on a fixed-fee basis pursuant to this Agreement, or for additional services requested, based on rates as mutually agreed in writing by the parties.
- c. 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); and (b) DPERS Request for Proposal, attached hereto as Exhibit B.. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

- d. All of the services specified by this Agreement shall be performed by _____, (“Principal Consulting Actuaries”), or by [ACTUARY]’s associates and employees under the personal supervision of Fiona Liston. The positions and billing rate rates for [ACTUARY]’s staff for calendar year 2018 are as follows:

Category	2018 Hourly Rate
Principal Consulting Actuaries Consulting Actuaries Associate Actuaries Senior Actuarial Analysts Actuarial Analysts Administrative staff	

3. [ACTUARY] Responsibilities.

- a. [ACTUARY] shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by [ACTUARY], its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, [ACTUARY] shall follow practices consistent with generally accepted professional and technical standards, including, but not limited to, the professional actuarial standards established by the Actuarial Standard Board. [ACTUARY] shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by Exhibits A-C of this agreement and 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 with DTI standards, the ACTUARY shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. [ACTUARY] shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DPERS caused by [ACTUARY] failure to ensure compliance with DTI standards.
- b. It shall be the duty of [ACTUARY] 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. [ACTUARY] will not produce a work product that violates or infringes on any copyright or patent rights. [ACTUARY] shall, without additional compensation, correct or revise any errors or

omissions in its work products.

- c. Permitted or required approval by DPERS of any products or services furnished by [ACTUARY] shall not in any way relieve [ACTUARY] of responsibility for the professional and technical accuracy and adequacy of its work. DPERS's review, approval, acceptance, or payment for any of [ACTUARY] 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 [ACTUARY] shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to DPERS caused by [ACTUARY]'s failure to perform under this Agreement.
- d. [ACTUARY] shall furnish to DPERS's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- e. [ACTUARY] agrees that its officers and employees will cooperate with DPERS in the performance of services under this Agreement and will be available for consultation with DPERS at such reasonable times with advance notice as to not conflict with their other responsibilities.
- f. [ACTUARY] 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 DPERS or any other political subdivision of DPERS.
- g. Any delay of services or change in sequence of tasks must be approved in writing by DPERS.
- h. [ACTUARY] will not use DPERS's name, either express or implied, in any of its advertising or sales materials without DPERS's express written consent.
- i. The rights and remedies of DPERS provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. 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.

5. Work Product and Intellectual Property Rights.

- a. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by [ACTUARY] for DPERS relating to the services to be performed hereunder shall become the property of DPERS and shall be delivered to DPERS's designated representative upon completion or termination of this Agreement, whichever comes first. DPERS shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- b. Any software developed by [ACTUARY] or used under this Agreement contains proprietary information, ideas, techniques, and trade secrets, and may be covered by copyright and other intellectual property rights. All such software shall remain the proprietary information, ideas, techniques and trade secrets of [ACTUARY]. In addition, all such software shall remain the property of [ACTUARY] and will not be provided to DPERS for use by DPERS unless [ACTUARY] licenses DPERS to use it. If the services required pursuant to this Agreement include the use of [ACTUARY]'s software products, said products will be leased to DPERS with the cost and term of such lease mutually agreed upon in writing. DPERS agrees not to attempt to circumvent the devices employed by [ACTUARY] to prevent access by any person, including but not limited to, DPERS's employees and agents, to the programmed content of the provided software. Furthermore, DPERS shall use its best efforts to keep the programmed contents secret and confidential in the case that inadvertent direct access is obtained. DPERS shall not use or disclose to anyone other than the employees or agents of the parties hereto any confidential information concerning [ACTUARY], except as may be required by 29 Del. C. § 10001, et. seq. and applicable laws or regulations. Confidential information relates to research, development, software, trade secrets or business affairs, but does not include information in the public domain. [ACTUARY] shall keep DPERS's data and reports confidential, and shall not disclose any DPERS information to any third parties without express written consent of DPERS, unless required by 29 Del. C. § 10001, et seq or other applicable laws or regulations.
- c. Actuary warrants 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 DPERS, DPERS shall promptly notify [ACTUARY] in writing and [ACTUARY] shall defend such claim, suit or action at bidding [Actuary's] expense, and [Actuary] shall indemnify DPERS 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.
- d. If any equipment, software, services (including methods) products or other

intellectual property used or furnished by the [Actuary] (collectively “Products”) is or in [Actuary]’s reasonable judgment is likely to be, held to constitute an infringing product, [Actuary] shall at its expense and option either:

- i. Procure the right for DPERS to continue using the Product(s);
- ii. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- iii. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that DPERS agrees to and accepts in writing.

6. Confidentiality.

- a. To the extent permissible under 29 Del. C. § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.
- b. [ACTUARY] will not disclose confidential information to others without the prior written consent of DPERS, except [ACTUARY] will not be prevented from disclosing information that (i) can be shown by contemporaneous documentation to have been in [ACTUARY]’s possession prior to its disclosure by [ACTUARY]; (ii) at the time of the disclosure is, or thereafter becomes, through no fault of [ACTUARY], part of public domain; or (iii) is furnished to [ACTUARY] by a third party after the time of the disclosure without the breach of any duty to DPERS.
- c. [ACTUARY] shall also comply with the confidentiality of data requirements set forth in Exhibit ____.

7. Indemnification; Limitation of Liability.

[ACTUARY] shall indemnify and hold harmless DPERS, the Board of Trustees, DPERS, 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 [ACTUARY] its agents or employees, regardless of whether such suits, actions claims or liabilities assert acts or failures to act which are attributable, in whole or in part, to DPERS, the Board of Trustees, DPERS, its employees or agents, or (B) [ACTUARY]’s breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) [ACTUARY] shall have been notified promptly in writing by DPERS of any notice of such claim; and (ii) [ACTUARY] shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise. The obligations set forth in this

paragraph 10 shall survive termination of the Agreement.

8. Notice.

Any notice required or permitted by the terms of this Agreement shall be given in writing by first class mail and properly addressed as follows:

If to DPERS:

Mr. David Craik
Pension Administrator
Office of Pensions
860 Silver Lake Boulevard, Suite 1
Dover, DE 19904

If to [ACTUARY]:

Any such notice shall be deemed to have been given when received.

9. Independent Contractor.

- a. It is understood that in the performance of the services herein provided for, [ACTUARY] shall be, and is, an independent contractor, and is not an agent or employee of DPERS and shall furnish such services in its own manner and method except as required by this Agreement. [ACTUARY] shall be solely responsible for, and shall indemnify, defend and save DPERS 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.
- b. [ACTUARY] acknowledges that [ACTUARY] and any subcontractors, agents or employees employed by [ACTUARY] shall not, under any circumstances, be considered employees of DPERS, and that it shall not be entitled to any of the benefits or rights afforded employees of DPERS, 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. DPERS will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of DPERS or any of its officers, employees or other agents.
- c. [ACTUARY] shall be responsible for providing liability insurance for its personnel.
- d. As an independent contractor, [ACTUARY] has no authority to bind or commit DPERS. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

10. Termination.

- a. **Termination for Cause.** If for any reasons, or through any cause, the [ACTUARY] fails to fulfil in timely and proper manner his obligations under the contract, or if the [ACTUARY] violates any of the covenants, agreements or stipulations of the contract, DPERS shall thereupon have the right to terminate the contract by giving written notice to the [ACTUARY] 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 [ACTUARY] under the contract shall, at the option of DPERS, become its property, and the [ACTUARY] shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to DPERS.
- b. **Termination for Convenience.** DPERS 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 [ACTUARY] under the contract shall, at the option of DPERS, become its property, and the [ACTUARY] shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to DPERS. If the contract is terminated by DPERS as so provided, the [ACTUARY] 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 [ACTUARY] as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the [ACTUARY] shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the [ACTUARY] during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.
- c. The rights and remedies of DPERS and [ACTUARY] provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

11. State of Delaware Business License. [ACTUARY] and all subcontractors represent that they are properly licensed and authorized to transact business in DPERS of DPERS as provided in 30 Del. C. § 2301.

12. Government Funding Certification. All reports and invoices submitted to DPERS by

[ACTUARY] shall include the following certification from an authorized representative of [ACTUARY]: “We certify that that the information reported herein is true, accurate and fully completed as required by this Agreement. We understand that these reports are made in support of claims for government funds.”

13. Insurance.

- a. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

i.	Comprehensive General Liability	\$1,000,000 per person and \$3,000,000 per occurrence
ii.	Professional Liability	\$4,000,000 per person /\$4,000,000 per occurrence.
iii.	Misc. Errors and Omissions and Product Liability	\$1,000,000 per person/\$3,000,000 per occurrence.
d	Product Liability	\$1,000,000/\$3,000,000

- b. If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage’s, secure at its own expense the following coverage:

i.	Automotive Liability (Bodily Injury)	\$100,000 per person/\$300,000 each accident
ii.	Automotive Property Damage (to others)	\$ 25,000

- c. [ACTUARY] shall provide forty-five (45) days written notice of cancellation or material change of any policies. In no event shall DPERS or DPERS be named as an additional insured on any policy required under this agreement.
- d. Any additional Cyber Liability insurance, if required, pursuant to Exhibit C.

14. Assignment of Antitrust Claims. As consideration for the award and execution of this contract by DPERS, [ACTUARY] hereby grants, conveys, sells, assigns, and transfers to DPERS 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 DPERS, relating to the particular goods or services purchased or acquired by the DPERS pursuant to this contract.

15. Miscellaneous Provisions.

- a. In performance of this Agreement, [ACTUARY] shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. [ACTUARY] shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- b. [ACTUARY] shall be properly licensed and authorized to conduct actuarial services and to transact business in the State of Delaware as provided in 30 Del. C. § 2502.
- c. In performing the services subject to this RFP the bidding Actuary will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin.
- d. 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.
- e. [ACTUARY] 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. [ACTUARY] further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- f. [ACTUARY] acknowledges that DPERS has an obligation to ensure that public funds are not used to subsidize private discrimination. [ACTUARY] 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, DPERS may declare [ACTUARY] in breach of the Agreement, terminate the Agreement, and designate [ACTUARY] as non-responsible.
- g. [ACTUARY] 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, DPERS 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.
- h. **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

- 16. Amendments.** This Agreement may be amended at any time but only in writing executed by DPERS and [ACTUARY]. If for some reason [ACTUARY] must perform additional work not anticipated within the scope of either the Regular Services or Special Services, [ACTUARY] will not proceed further without obtaining Client's written approval. 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.
- 17. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of DPERS. [ACTUARY] consents to jurisdiction and venue in DPERS.
- 18. Entire Agreement.** This Agreement is the entire agreement of the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, understandings, and agreements of the parties relating to the subject matter hereof. It may be amended only by an agreement in writing, signed by both parties.
- 19. Assignment.** This Agreement may not be assigned without the prior written consent of the other party, and it shall terminate automatically on the occurrence of such assignment without consent. Approval by DPERS of [ACTUARY]'s request to subcontract or acceptance of or payment for subcontracted work by DPERS shall not in any way relieve [ACTUARY] of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 20. 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.
- 21. Waiver.** The failure of DPERS or [ACTUARY] to insist, in any one or more instances, upon performance of any of the terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition.

No further text. Signatures follow.

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

For the Delaware Public Employees’:

For [ACTUARY], Inc:

Retirement System

By: _____

By: _____

Title: _____

Title: Consulting Actuary

Date: _____

Date: _____

Exhibit A

STATEMENT OF WORK AND FEE

Exhibit B

REQUEST FOR PROPOSAL FOR PROFESSIONAL SERVICES OF THE BOARD OF PENSION TRUSTEES OF THE DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND OFFICE OF PENSIONS DATED FEBRUARY 8, 2018.

Exhibit C

Cyber Responsibilities, Liability, and Insurance