

**REQUEST FOR PROPOSALS ISSUED BY STATE OF DELAWARE BANK
COMMISSIONER FOR PROFESSIONAL SERVICES TO A PROVIDE SHORT-TERM
CONSUMER LOAN DATABASE AND RELATED SERVICES**

I. Overview

The State of Delaware Bank Commissioner seeks proposals for professional services to provide a short-term consumer loan database and related services. This request for proposals (“RFP”) is issued pursuant to 29 Del.C. §§6981 and 6982.

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

Public Notice	Date: August 31, 2012
Deadline for Receipt of Proposals	Date: September 17, 2012
Notification of Award	Date: October 22, 2012

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm’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. The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

II. Scope of Services

A. Definitions

All terms used in this RFP shall have meanings consistent with the provisions of 5 Del.C. Ch. 22, and unless otherwise specifically defined, or unless another intention clearly appears, or unless the context requires a different meaning:

1. “Commissioner” means the State Bank Commissioner.
2. “Database” means the database described by 5 Del.C. §2235B.
3. “Licensee” means a lender that is licensed by the Commissioner and provides Short-Term Consumer Loans under 5 Del.C. §2235A.
4. “Short-Term Consumer Loan” means any single extension of closed-end credit of \$1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle. This term includes an extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of

the payment of a fee without approval of a new loan application and a refinancing.

B. Description of Services

On June 27, 2012, the State of Delaware enacted 78 Del. Laws Ch. 278 (“the Act”). See Appendix A attached. This Act amended existing §§2227 and 2235A of Title 5 of the Delaware Code and also added new §§2235B and 2235C to that Title, effective January 1, 2013.

The Act limits to five the number of short-term consumer loans (sometimes called payday loans) that any one borrower may obtain in a twelve month period and changes the definition of short-term consumer loan to include loans up to \$1,000 rather than \$500.

The Act further provides in new §2235B for the establishment of a Database to track the number of short-term consumer loans that an individual obtains in a twelve month period, and in new §2235C, it directs the State Bank Commissioner to provide to the Delaware General Assembly a yearly report on the prevalence and nature of these payday loans.

This RFP seeks proposals from qualified vendors to develop and implement the Database required by new §2235B with the report generating capabilities required by new §22354C.

The vendor, in exchange for compensation to be paid entirely by Licensees through the Commissioner on a per transaction fee basis pursuant to new §2235B(e)(4) and as scheduled by the Commissioner, shall provide the following as a complete and comprehensive Database with report generating capabilities to meet the needs of the Commissioner as set forth herein:

1. Implement, customize (as required) and maintain a Database that shall be accessible by all Licensees and the Commissioner on a real-time basis via the Internet.
2. Provide an option for the Database to interface directly with each Licensee’s point-of-sale system.
3. Capture historical loan data from the Licensees.
4. Accept an initial file and periodic updates generated by the Commissioner’s computer system to populate the Database with Licensees’ identifying information (name, address, control number, etc.) in a format acceptable to both parties.
5. Take all actions necessary to insure and protect the confidentiality and security of the information contained in the Database and to insure the maximum availability and reliability of the Database to support business operations, including:

- a. Allowing a Licensee to correct promptly any incorrect data entered into the Database that was previously submitted;
 - b. Establishing and maintaining a process for responding to transaction verification requests from a Licensee in the event the Database is inaccessible due to technical difficulties;
 - c. Taking reasonable measures to prevent identity theft;
 - d. Providing accurate and secure receipt, transmission and storage of borrower data;
 - e. Deleting identifying borrower information from the Database on a regular and routine basis at any designated period after a Short-Term Consumer Loan is paid off;
 - f. Retaining, archiving, and deleting information entered or stored in the Database under standards set by the Commissioner; and
 - g. Providing the Commissioner or the Commissioner's designee complete access to the Database.
6. Collect Short-Term Consumer Loan transaction data for all such loans subject to 5 Del.C. §2235A. It is preferred that all information indicated below (a. through pp.) be collected, however, at a minimum, the Database shall collect the information indicated as required (a. through t.). Additionally, based on future legislative changes or rulemaking associated with 5 Del.C. §§2235A, 2235B and 2235C, other data elements may need to be collected by the Database along with additional requirements to be performed by the vendor for the dates specified in the legislative changes or rulemaking. Such changes may be communicated by the Commissioner to the vendor prior to award of the contract (if any) or to the vendor after award of the contract (if any).

Required Information to be Collected and Stored in the Database:

- a. Licensee's name and license number;
- b. Licensee's office location;
- c. Borrower's first and last name
- d. Borrower's address
- e. Borrower's social security or employment authorization number;
- f. Borrower's gross monthly income;

- g. The amount of the Short-Term Consumer Loan transaction;
- h. The annual percentage rate of the Short-Term Consumer Loan transaction as computed under the federal Truth in Lending Act;
- i. The date of the Short-Term Consumer Loan transaction;
- j. The anticipated date that the Short-Term Consumer Loan transaction will be paid off;
- k. The date that a Short-Term Consumer Loan transaction is paid in full, or is otherwise satisfied;
- l. The date that a Short-Term Consumer Loan transaction defaults and the amount of that default;
- m. Whether a potential borrower is eligible for a Short-Term Consumer Loan under 5 Del.C. §2235A;
- n. The specific reason(s) for ineligibility if a potential borrower is not eligible for a Short-Term Consumer Loan under 5 Del.C. §2235A;
- o. Routing number and checking account number for any check securing the loan;
- p. The date funds for the Short-Term Consumer Loan transaction are disbursed;
- q. Whether the borrower is or is not a member of the military services of the United States, and whether borrower is or is not the spouse or dependent of such a servicemember;
- r. Number and purpose of inquiries made to the call center;
- s. Any other information needed for a Licensee to comply with 5 Del.C. §2235A; and
- t. Any other information needed to prepare the report described in Item 16 below.

Additional Information that is Preferred to be collected and Stored in the Database:

- u. Name of the Licensee's employee entering data;
- v. Application date;

- w. Dollar (principal) amount of the Short-Term Consumer Loan;
- x. Annual Percentage Rate as computed under the federal Truth in Lending Act that is disclosed to borrower;
- y. Dollar amount of interest, and dollar amount of each type of fee charged for the Short-Term Consumer Loan;
- z. Number of days in a potential borrower's pay cycle;
- aa. Term of the Short-Term Consumer Loan;
- bb. Dollar amount of any check given to secure the Short-Term Consumer Loan;
- cc. Date of cancellation if borrower cancels the Short-Term Consumer Loan;
- dd. Dollar amount and payment date of any partial payments made prior to maturity of the Short-Term Consumer Loan;
- ee. Dollar amount of refunds made to borrower for partial prepayments of the Short-Term Consumer Loan;
- ff. Date and number of times borrower's check is presented to a financial institution for payment;
- gg. Dollar amount of returned check fees charged to borrower;
- hh. Date any legal proceedings are initiated by Licensee against borrower for non-payment;
- ii. If a judgment is obtained against the borrower, the dollar amount of court costs and attorney fees collected from borrower;
- jj. Dollar amount recovered through judgment;
- kk. If the Short-Term Consumer Loan is charged off, the dollar amount charged off;
- ll. Source of repayment (employment vs. Social Security);
- mm. Loan number for the Short-Term Consumer Loan;
- nn. Total finance charges for the Short-Term Consumer Loan;
- oo. Time/date stamps for when data is entered by Licensee; and

- pp. Whether any consumer contacted Database vendor regarding ineligibility.
7. Limit Database access in accordance with the provisions of 5 Del.C. §§2235A, 2235B and 2235C and the regulations promulgated by the Commissioner.
 8. Record in the Database the date, time, source (borrower or Licensee), and purpose of all inquiries to the call center.
 9. Track all Short-Term Consumer Loan activity in the State of Delaware.
 10. Operate a call center with a toll-free telephone number for the following purposes:
 - a. To advise borrowers of the reason for their ineligibility as reported by the Licensee;
 - b. To assist in resolving problems relating to denial of eligibility;
 - c. To assist in resolving disputes between borrowers or potential borrowers and Licensees, and
 - d. To certify eligibility of potential borrowers and/or to input loan data when the Licensees are unable to access the Database.
 11. Refer consumer complaints outside the scope of Items 10.a, 10.b, and 10.c above to a specific contact person within the Commissioner's office.
 12. Advise each Licensee:
 - a. Whether a potential borrower has an outstanding Short-Term Consumer Loan;
 - b. The total number of Short-Term Consumer Loans a potential borrower has outstanding;
 - c. Whether a potential borrower is eligible for a Short-Term Consumer Loan in accordance with all provisions of 5 Del.C. §2235A;
 - d. Whether the terms of a proposed Short-Term Consumer Loan comply with the provisions of 5 Del.C. §2235A; and
 - e. Any other information necessary to comply with 5 Del.C. Ch. 22.
 13. Develop detailed reports, visible and down-loadable, through the Internet Database on Short-Term Consumer Loan activity of Licensees, to assist with policy considerations by the Delaware General Assembly, to support any

necessary enforcement actions, and to support the examination, supervision, and regulation of the Licensees by the Commissioner.

14. When first learned, direct any complaints regarding misuse of the Database by Licensees to a point-of-contact in the Commissioner's office.
15. Submit to the Commissioner no later than February 28 of each year a report that contains the following information as of December 31 of the previous year:
 - a. The total number and dollar amount of Short-Term Consumer Loan transactions;
 - b. The total number of individual borrowers who entered into Short-Term Consumer Loan transactions along with their gross monthly income;
 - c. The minimum, maximum, and average amount of Short-Term Consumer Loan transactions;
 - d. The minimum, maximum, and average annual percentage rate of Short-Term Consumer Loans;
 - e. The average number of days a Short-Term Consumer Loan is outstanding;
 - f. The number of borrowers entering into each permissible number of Short-Term Consumer Loans, one transaction to five transactions;
 - g. The default rate on Short-Term Consumer Loans; and
 - h. Any other information requested by the Commissioner on or before January 20 of the year that the report is due.
16. Provide training to Licensees and the Commissioner's staff.
17. Develop and provide an appropriate training plan that includes Licensees and the Commissioner's staff and submit that plan to the Commissioner for review and approval prior to performing training services.
18. Provide appropriate Database and user documentation.
19. Provide the Commissioner with input on administrative rules relating to the use and operation of the Database.
20. Implement the Database to include all requirements to insure operability of the Database NO LATER THAN JANUARY 1, 2013.

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 at the time of proposal submission.
3. Experience and demonstrated ability:
The vendor must meet all of the following in order to qualify for submitting a proposal in response to this RFP:
 - a. Successful implementation and continual operation for a period of at least one year immediately prior to this RFP of an Internet based database accessible on a real time basis for at least one jurisdiction under a statute regulating small dollar-value consumer loans; and
 - b. Business operations for a minimum of five years.

B. General Evaluation Requirements

1. Conformance of vendor's proposal to each of the technical functions described in this RFP at Items II.B.1 through 9 and II.B.20 above.
2. Experience, expertise, capacity and financial strength of vendor.
Complete Appendix B attached.
3. Conformance of vendor's proposal to each of the product support and customer service requirements described in this RFP at Items II.B. 10 through 19 above.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP:
This RFP is available in electronic form only through the State of Delaware Procurement website at <http://bids.delaware.gov/> . Paper copies of this RFP will not be available.

2. **Public Notice:**
Public notice has been provided in accordance with 29 Del. C. §6981.
3. **Assistance to Vendors with a Disability:**
Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.
4. **RFP Designated Contact:**
All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Robert A. Glen
State Bank Commissioner
555 E. Loockerman Street
Dover, DE 19901
BankCommissioner@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:**
The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact such consultant or legal counsel on any matter related to the RFP.
6. **Contact with State Employees:**
Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.
7. **Organizations Ineligible to Bid:**
Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions:

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

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as:
 - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms:

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

2. Proposals:

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

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **1:00PM ET on September 17, 2012**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Office of the State Bank Commissioner
555 East Loockerman Street, Suite 210
Dover, DE 19901**

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **1:00PM ET on September 17, 2012**. Any proposal received after this time and date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

3. Proposal Modifications:

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

4. Proposal Costs and Expenses:

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

5. Proposal Expiration Date:

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through October 22, 2012. The State of Delaware reserves the right to ask for an extension of time if needed.

6. Late Proposals:

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin

shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening:

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

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

8. Non-Conforming Proposals:

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

9. Concise Proposals:

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

10. Realistic Proposals:

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

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

11. Confidentiality of Documents:

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

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware's records are public records (unless

otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. §10002(d), and briefly stating the reasons that each document meets the said definitions.

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

12. Multi-Vendor Solutions (Joint Ventures):

Multi-vendor 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 the State of Delaware 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 vendor'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. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor 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 vendor.

- a. **Primary Vendor:**
The State of Delaware expects to negotiate and contract with only one “prime vendor”. The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor 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 awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

- b. **Sub-Contracting:**
The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors 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 vendor 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.

- c. **Multiple Proposals:**
A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

13. **Sub-Contracting:**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors 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 subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

14. Discrepancies and Omissions:

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

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

a. RFP Question and Answer Process:

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

Section number
Paragraph number
Page number
Text of passage being questioned
Question

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

15. State's Right to Reject Proposals:

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

16. State's Right to Cancel Solicitation:

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of

Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

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

17. State's Right to Award Multiple Source Contracting:

Pursuant to 29 Del.C. §6986, the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

18. Notification of Withdrawal of Proposal:

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

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

19. Revisions to the RFP:

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

20. Exceptions to the RFP:

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

21. Award of Contract:

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

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

22. Award Notifications:

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

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

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

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

C. RFP Evaluation Process

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

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

1. Proposal Evaluation Team:

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

2. Proposal Selection Criteria:

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

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

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.

a. Criteria Weight:

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

Criteria	Points
Technical Functionality	100 pts
Experience, Expertise, Capacity & Financial Strength	60 pts
Product Support & Customer Service	40 pts
Total	200 pts

3. **Proposal Clarification:**
The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.
4. **References:**
The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.
5. **Oral Presentations:**
Selected vendors may be invited to make oral presentations to the Evaluation Team. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

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

D. Contract Terms and Conditions

1. **General Information:**
 - a. The term of the contract between the successful bidder and the State shall be for 2 years with extensions for a period of 1 year for each extension.
 - b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
 - c. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by vendor, its subcontractors and its and their principals, officers, employees and agents under the agreement. In performing the specified services, vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all

services, products and deliverables furnished pursuant to the agreement comply with standards promulgated by the Department of Technology and Information (“DTI”) published at <http://dti.delaware.gov>, and as modified from time to time by DTI during the term of the agreement and also with the technology specifications in Appendix C attached. If any service, product, or deliverable furnished pursuant to the agreement does not conform with DTI standards, vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Vendor shall be and remain liable in accordance with the terms of the agreement and applicable laws for all damages to Office of the State Bank Commissioner or the State caused by vendor’s failure to ensure compliance with DTI standards.

- d. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor’s response to this RFP will be incorporated as part of any formal contract.
- e. The State of Delaware’s standard contract will most likely be supplemented with the vendor’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 vendor shall promptly execute a contract incorporating the terms of this RFP. No vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- g. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud:

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

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without

collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

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

3. Lobbying and Gratuities:

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

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

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

4. Solicitation of State Employees:

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

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms:

a. Independent contractors:

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

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

b. Non-Appropriation:

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

c. Licenses and Permits:

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 Del.C. §2301.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to the Business License Department – (302) 577-8778.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware

licensing requirements may subject vendor to applicable fines and/or interest penalties.

d. Notice:

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

Robert A. Glen
State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

e. Indemnification:

1) General Indemnification:

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

2) Proprietary Rights Indemnification:

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- a) Procure the right for the State of Delaware to continue using the Product(s);

- b) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
 - c) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.
- f. Insurance:
- 1) Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
 - 2) The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
 - 3) Vendor shall maintain the following insurance during the term of this Agreement:
 - a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
 - b) Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
 - c) Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
 - d) Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
 - e) Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and

- f) If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- 4) The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.
- g. Performance Requirements:
The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.
- h. Warranty:
The Vendor 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 Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.
- i. Costs and Payment Schedules:
All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).
- j. Penalties:
The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.
- k. Termination for Cause:
If for any reasons, or through any cause, the Vendor fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying

the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware.

l. Termination for Convenience:

The State of Delaware may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware. If the contract is terminated by the State of Delaware as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. 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 Vendor 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 Vendor 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 vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

n. Covenant against Contingent Fees:

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose

of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- o. Vendor Activity:
No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.
- p. Work Product:
All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.
- q. Contract Documents:
The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.
- r. Applicable Law:
The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

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

- 1) The laws of the State of Delaware;
- 2) The applicable portion of the Federal Civil Rights Act of 1964;
- 3) The Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- 4) A condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and

- 5) That programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

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

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

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 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. Other General Conditions:

- 1) Current Version – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- 2) Current Manufacture – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- 3) Volumes and Quantities – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- 4) Prior Use – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.

- 5) Status Reporting – The selected vendor 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.
- 6) Regulations – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- 7) Changes – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- 8) Additional Terms and Conditions – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. No Press Releases or Public Disclosure:
Vendors may not release any information about this RFP. The State of Delaware reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the State of Delaware.
2. Definitions of Requirements:
To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words shall, will and/or must are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.
3. Production Environment Requirements:
The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

APPENDIX A

CHAPTER 278

FORMERLY

HOUSE BILL NO. 289

AS AMENDED BY

HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO LOANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend §2227, Title 5 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2227. Definitions.

As used in this subchapter:

(1) "Business day" means, with respect to rescission under §2235A of this title, all calendar days except Sundays and legal public holidays.

(2) "Closed end credit" means the extension of credit by a licensee to a borrower pursuant to an arrangement or agreement which is not a revolving credit plan as defined in subchapter II of this chapter.

(3) "Conspicuously displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.

(4) "Loan" means any single extension of closed end credit.

(5) "Right of rescission" means, with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

(6) "Rollover" means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

(7) "Short-term consumer loan" means a loan of ~~\$500~~1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle.

(8) "Workout agreement" means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness. ~~which requires a net reduction of not less than 10% of such indebtedness per payment period. The workout agreement must provide for payments in equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.~~

Section 2. Amend §2235A, Title 5 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2235A. Short-term consumer loans.

(a) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following:

(1) Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than five (5) short-term consumer loans from all licensees in any twelve-month period. For the purposes of this section a rollover or a refinancing shall be considered a short-term consumer loan. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of this section is a violation of Chapter 25 of Title 6 of the Delaware Code.

~~(12)~~ No licensee shall make more than 4 rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

~~(23)~~ No licensee shall make a short-term consumer loan unless such loan is subject to a right of rescission on the part of the individual borrower.

~~(34)~~ No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

(b) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following: No licensee shall make a short-term consumer loan unless the application for such loan, which application shall be written in both English and Spanish, contains a written disclosure, conspicuously displayed, that:

(1) The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

(2) Additional fees may accrue if the loan is rolled over; and

(3) Credit counseling services are available to consumers who are experiencing financial problems.

(c) Nothing in this section prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

(d) The Commissioner is authorized to promulgate rules and regulations to exempt certain loans or classes of loans from the requirements of this section.

(e) Every short-term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that: "A payday loan is not intended to meet long-term financial needs."

(f) A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of this chapter through any method including, but not limited to, mail, telephone, internet or any electronic means, including:

(1) Offering, making, or assisting a borrower to obtain a loan in violation of subsection (a), or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.

(2) Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of subsection (a).

Section 3. Amend Title 5 of the Delaware Code by inserting a new section 2235B as shown by underlining as follows:

§2235B. Database.

(a) The Commissioner shall, by contract with a third-party provider or otherwise, develop and implement a common database with real-time access through an Internet connection by means of which a licensee may determine:

(1) Whether a borrower has an outstanding short-term consumer loan;

(2) The number of short-term consumer loans the borrower has outstanding;

(3) Whether the borrower is eligible for a loan under subsection (a) of §2235A of this chapter; and

(4) Any other information necessary to comply with this chapter.

(b) The Commissioner shall ensure that the provider of the database referred to in this section is responsible to:

(1) Establish and maintain a process for responding to transaction verification requests from a licensee in the event the database is inaccessible due to technical difficulties;

(2) Take reasonable measures to prevent identity theft;

(3) Provide accurate and secure receipt, transmission and storage of borrower data;
and

(4) Provide the Commissioner or his designee complete access to the database.

(c) Licensees shall:

(1) When entering into a short-term consumer loan, accurately and immediately submit to the database any data in the format that the Commissioner may require, including the borrower's name, address, social security or employment authorization number, gross monthly income, amount of transaction, interest rate, date of transaction, anticipated date loan will be paid off;

(2) Promptly correct any incorrect data entered into the database that was previously submitted; and

(3) Promptly record the date a short-term consumer loan is paid in full.

(d) A licensee must continue to enter and update all required information for any short-term consumer loans subject to this section that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by this chapter. Within ten business days after ceasing to make loans subject to this section, the licensee must submit a plan for continuing compliance with this subsection to the Commissioner for approval. The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this section.

(e) The Commissioner shall adopt rules or regulations for the administration and enforcement of this section. Such regulations shall include:

(1) A requirement that identifying borrower information is deleted from the database on a regular and routine basis, twelve months after the loan is paid off;

(2) Standards for the retention, archiving, and deletion of information entered or stored in the database;

(3) A requirement that data collected pursuant to this section be used only as prescribed in this chapter or for research and reporting as authorized by the Banking Commissioner;

(4) A Rule authorizing a fee per transaction for data required to be submitted. The fee shall be payable by the licensee to the Commissioner. The fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of this section. A customer shall not be charged all or part of the fee.

(f) The database established under this section shall not be considered a public record for purposes of the Freedom of Information Act in Chapter 100, Title 29 of this Code.

Section 4. Amend Title 5 of the Delaware Code inserting a new section 2235C as shown by underlining as follows:

§2235C. Report by Commissioner

(a) The Commissioner shall collect and submit the following information to the Banking Committee of the Senate and the Economic Development/Banking/Insurance/Commerce Committee of the House of Representatives on or before March 15 of each year:

(1) The total number and dollar amount of short-term consumer loan transactions;

(2) The total number of individual borrowers who entered into short-term consumer loan transactions along with their gross monthly income;

(3) The minimum, maximum, and average amount of short-term consumer loan transactions;

(4) The minimum, maximum, and average annual percentage rate of short-term consumer loans;

(5) The average number of days a short-term consumer loan is outstanding;

(6) The number of borrowers entering into each permissible number of short-term consumer loans, one transaction to five transactions;

(7) The default rate on short-term consumer loans;

(8) Any other information that the commissioner believes is relevant or useful; and

(9) Any other information requested by the banking committees at least 60 days before the Commissioner's report is due.

(b) The Commissioner shall require the database operator and licensees to submit any and all information necessary for the Commissioner to prepare the report referenced in subsection (a).

Section 5. This Act shall be effective on January 1, 2013.

Approved June 27, 2012

APPENDIX B

Experience, Expertise, Capacity and Financial Strength of Vendor

1. Years in business: Year vendor was founded:_____. Indicate the length of time in business providing services similar to those described in this RFP: _____years _____months.
2. Background and Experience: Describe vendor's background, expertise and experience in providing services similar to those described in this RFP.
3. Corporate Identity: Identify any parent corporation and all subsidiaries of vendor. Include address, phone and fax numbers, FEIN or tax ID No., vendor's web site and contact email of each entity.
4. Organization & Structure: Provide an overview of vendor's organizational operating structure and describe the operational and functional relationships of the business units of vendor's organization, as it relates to its proposal, Organizational charts are helpful supplements.
5. Locations: Describe the geographical locations of vendor at the national, regional, and local levels, as applicable, and identify all locations that will be used to support this contract and the operations handled from these locations.
6. Staff: Number of staff currently employed in all operations:_____, Number of staff currently employed in providing services similar to those described in this RFP: _____.
7. Litigation: Describe all litigation brought against the vendor within the last five years.
8. Strategic Relationships: Identify any subcontractors and describe all outsourced services to be used in performance of any contract resulting from this RFP.
9. Quality Program: Describe all quality programs vendor has adopted which directly affect its proposal.
10. Contract Cancellations: Indicate whether any contracts for services similar to those described in this RFP have not been extended or have been cancelled for performance issues in the last three years.
11. Total Annual Revenue: State vendor's total annual revenue for the past five years. Indicate the revenues derived from providing services similar to those described in this RFP.

12. Annual Reports: Include vendor's annual reports, or audited financial statements if a privately held entity, for the past three years. In the event the most recent annual report or audited financial statements do not include 2011 financial data, the 2011 financial data must also be provided even though it may be unaudited.
13. Customer References: Provide three references from past or current accounts, with contact names, email addresses, phone number and service descriptions (specific services provided), which may be used in reference checking. Vendor should verify that the reference information (contact person, telephone numbers and email address) is current and up-to-date prior to submission.

Reference # 1

Organization/Company Name: _____

Period of Performance (Contract) From _____ through _____

(Beginning Date)

(Ending Date)

Contact Name(s): _____

Email: _____

Phone Number: _____

Service Description:

Reference # 2

Organization/Company Name: _____

Period of Performance (Contract) From _____ through _____

(Beginning Date)

(Ending Date)

Contact Name(s): _____

Email: _____

Phone Number: _____

Service Description:

Reference # 3

Organization/Company Name: _____

Period of Performance (Contract) From _____ through _____
(Beginning Date) (Ending Date)

Contact Name(s): _____

Email: _____

Phone Number: _____

Service Description:

APPENDIX C

Technology Specifications

Required Specificatons

1. With respect to work provided to or conducted for the State by a vendor, the vendor(s) shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished to the state. The vendor(s) shall follow practices consistent with generally accepted professional and technical policies and standards. The vendor(s) shall be responsible for ensuring that all services, products and deliverables furnished to the State are coordinated with the Department of Technology and Information (DTI) and are consistent with practices utilized by, or policies and standards promulgated by DTI. If any service, product or deliverable furnished by a vendor(s) does not conform to State policies, standards or general practices, the vendor(s) shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to State policies, standards or practices.
2. The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.
3. The vendor is required to agree to the requirements in the **CONFIDENTIALITY AND INTEGRITY OF DATA STATEMENT**, attached, and made a part of this RFP. Vendor employees, individually, may be required to sign the statement prior to beginning any work.
4. Computer, network, and information security is of paramount concern for the State of Delaware and the Department of Technology and Information. The State wants to ensure that computer/network hardware and software does not compromise the security of its IT infrastructure. The SANS Institute and the FBI have released a document describing the Top 20 Internet Security Threats. The document is available at www.sans.org/top20.htm for review. The vendor is guaranteeing that any systems or software provided by the vendor are free of the vulnerabilities listed in that document.
5. It shall be the duty of the vendor to assure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by the State of Delaware. Vendor's agreement shall not limit or modify liability for information security breaches, and vendor shall indemnify and hold harmless the State, its agents and employees, from any

and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, the State shall subtract from any payment made to vendor all damages, costs and expenses caused by such information security breaches that have not been previously paid to vendor.

6. The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract.
7. Protection of personal privacy must be an integral part of the business activities of the vendor to ensure that there is no inappropriate use of State of Delaware information at any time. To this end, the vendor shall comply with the following conditions: Personal information obtained by the vendor will become and remain property of the State of Delaware. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by the vendor or any party related to the Vendor for subsequent use in any transaction that does not include the State of Delaware. The Vendor may not use any personal information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
8. When requested by the State of Delaware, the provider must destroy all requested data in all of its forms, disk, CD / DVD, tape, paper, for examples. Data shall be destroyed according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction must be provided to the State of Delaware.
9. The vendor shall not store or transfer State of Delaware data outside of the United States.
10. The vendor must inform the State of Delaware of any security breach or detection of any suspicious intrusion that is or has occurred that jeopardizes the State of Delaware data or processes. This notice must be given to the State of Delaware within 24 hours of its discovery. Full disclosure of the assets that might have been jeopardized must be made. In addition, the vendor must inform the State of Delaware of the actions it is taking or will take to reduce the risk of further loss to the State. If the breach requires public notification, all communication shall be coordinated with the State of Delaware.
11. The vendor must encrypt all non-public data in transit to the cloud. In addition, the vendor will comply with the ISO/IEC 27001 standard for information security management systems, providing evidence of their certification or pursuit of certification.
12. The vendor shall disclose to the State of Delaware a description of their roles and responsibilities related to electronic discovery, litigation holds, discovery searches, and expert testimonies. The provider shall disclose its process for responding to subpoenas, service of process, and other legal requests.
13. In the event of termination of the contract, the vendor shall implement an orderly return of State of Delaware assets and the subsequent secure disposal of State of Delaware assets.

14. During any period of suspension, the vendor will not take any action to intentionally erase any State of Delaware Data.
15. In the event of termination of any services or agreement in entirety, the vendor will not take any action to intentionally erase any State of Delaware Data for a period of 90 days after the effective date of the termination. After such 90 day period, the vendor shall have no obligation to maintain or provide any State of Delaware Data and shall thereafter, unless legally prohibited, delete all State of Delaware Data in its systems or otherwise in its possession or under its control.
16. The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.
17. The vendor shall:
 - a. Ensure that State information is protected with reasonable security measures,
 - b. Promote and maintain among the vendor's employees and agents an awareness of the security needs of the State's information,
 - c. Safeguard the confidentiality, integrity, and availability of State information,
 - d. Ensure that appropriate security measures are put in place to protect the vendor's internal systems from intrusions and other attacks.
18. The vendor shall not utilize any staff (including sub-contractors) to fulfill the obligations of the contract who has been convicted of a felony or class A misdemeanor.
19. The vendor will make the State of Delaware's data and processes available to third parties only with the express written permission of the State.

Negotiable Specifications

20. The vendor will not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues or (iii) at State of Delaware's written request.
21. The vendor must allow the State of Delaware access to system logs, latency statistics, etc. that affect its data and or processes.
22. The vendor must allow the State of Delaware to audit conformance to the contract terms and test for vulnerabilities. The State of Delaware may perform this audit or contract with a third party at its discretion.
23. Advance notice (to be determined at contract time) must be given to the State of Delaware of any major upgrades or system changes that the vendor will be performing. The State of Delaware reserves the right to defer these changes if desired.

24. The vendor shall disclose its security processes and technical limitations to the State of Delaware such that adequate protection and flexibility can be attained between the State of Delaware's and the vendor. An example might be virus checking and port sniffing – the State of Delaware and the vendor must understand each other's roles and responsibilities.
25. The vendor will cover the costs of response and recovery from a data breach. The State will expect to recover all breach costs from the provider.
26. The State of Delaware will provide requirements to vendor for encryption of the data at rest.
27. The vendor shall have robust compartmentalization of job duties, perform background checks, require/enforce non-disclosure agreements, and limit staff knowledge of customer data to that which is absolutely needed to perform job duties.
28. The vendor will provide documentation of internal and external security controls, and their compliance level to industry standards.
29. The State of Delaware and the provider shall identify a collaborative governance structure as part of the design and development of service delivery and service agreements.
30. The State of Delaware must have the ability to import or export data in piecemeal or in its entirety at its discretion without interference from the vendor.
31. The vendor will be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environment are the responsibilities of the vendor. The environment and/or applications must be available on a 24 hours per day, 365 days per year basis, providing around-the-clock service to customers as defined in this RFP.
32. The web portal hosting site environment shall include redundant power, fire suppression, and 24 hours per day, 365 days per year on-site security. The hosting environment shall include redundant Internet connectivity, redundant firewalls, Virtual Private Network (VPN) services, secured remote access methods, fault tolerant internal network with gigabit Ethernet backbone, clustered central file and database servers, load balanced, application, and web servers, hardware, accelerator, three tier development environment, nightly backups, and 24x365 monitoring of all services and servers.
33. The vendor shall identify all of its strategic business partners who will be involved in any application development and/or operations.
34. The State shall have the right at any time to require that the vendor remove from interaction with State any vendor representative who the State believes is detrimental to

its working relationship with the vendor. The State will provide the vendor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the vendor shall immediately remove such individual. The vendor shall not assign the person to any aspect of the contract or future work orders without the State's consent.

35. The vendor will ensure the State of Delaware's Recovery Time Objectives (RTOs) is met.
36. The vendor will provide evidence that their Business Continuity Program is certified and mapped to the international BS 25999 standard.
37. The vendor shall ensure that State of Delaware backed-up data is not commingled with other cloud service customer data.
38. The vendor shall make available to the State all customer data in a state defined format based on vendor and state platforms including: Database, O/S and physical media, along with attachments in their native format.
39. Vendors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the vendor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available at: www.DTI.Delaware.gov .
40. The vendor may deliver two copies of each software source code and software source code documentation to a State-approved escrow agent with the State's prior approval. The vendor shall cause the escrow agent to place the software source code in the escrow agent's vaulted location, in Delaware, and that is acceptable to the State. Two copies of the source code shall be stored on compact discs or other media designated by the State in a format acceptable to the State, and shall be easily readable and understandable by functional analysts and technical personnel with the skill set for that type of component, subcomponent, or software code.

	STATE OF DELAWARE DEPARTMENT OF TECHNOLOGY AND INFORMATION 801 Silver Lake Blvd. Dover, Delaware 19904	
	Doc Ref Number: DTI-0065	Revision Number:
Document Type: Internal Policy	Page: 10 of 11	
Policy Title: Confidentiality(Non-disclosure) and Integrity of Data		

Appendix 2 – Contractor Acknowledgement Certification



State of Delaware
DEPARTMENT OF TECHNOLOGY AND INFORMATION
 William Penn Building
 801 Silver Lake Boulevard
 Dover, Delaware 19904

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

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

I/we, as an employee(s) of _____ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

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



"Enabling Excellence In Delaware State Government"



STATE OF DELAWARE
DEPARTMENT OF TECHNOLOGY AND INFORMATION
801 Silver Lake Blvd.
Dover, Delaware 19904

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Policy Title:	Confidentiality(Non-disclosure) and Integrity of Data		

I, the Undersigned, hereby affirm that I have read DTI's Policy On Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature _____

Date: _____

Contractor Name: _____



"Enabling Excellence In Delaware State Government"