

**REQUEST FOR PROPOSAL FOR DELAWARE COLLEGE INVESTMENT PLAN  
PROGRAM MANAGER AND ADMINISTRATION SERVICES ISSUED BY THE  
OFFICE OF THE STATE TREASURER**

**CONTRACT NUMBER: TRE-CPM-20102- COLLEGE INVESTMENT PLAN  
PROGRAM MANAGER AND ADMINISTRATION SERVICES**

**OVERVIEW**

By this request for proposal (“RFP”), the Office of the State Treasurer (“OST”), on behalf of itself and the Plans Management Board (“Board”), are seeking proposals from qualified program managers (“Vendors”) to provide recordkeeping, investment management and administrative services for the State’s college investment plan under Section 529 of the Internal Revenue Code (“529 Plan”).

This RFP is issued pursuant to 29 *Del. C.* §§ 6981, 6982(b) and 6986.

**A. Timetable**

The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP published	12/7/2020
Deadline for Vendors Questions	12/18/2020
Deadline for State Responses - Q&A Closed and Published	1/8/2021
Deadline for Vendors Proposal Submission	1/22/2021 (4:00 PM Eastern time)
Date for Invitation	1/25/2021
Finalist Presentations	February 2021
Finalist Selected	February 2021
Estimated Award Notifications (Board Approval)	March 2021
Complete Contract Negotiations	April 2021

There will be no pre-bid meeting associated with this RFP.

This RFP is not an offer. The State reserves the right to cancel this RFP or modify the above RFP dates at any time, and for any reason.

Vendors are expected to fully inform themselves of, and by submitting a proposal shall be deemed to have read, understood and unconditionally and irrevocably accepted, all conditions, requirements, and specifications of this RFP and all attachments and exhibits, subject only to the exception process provided for herein.

## **B. Proposal to Remain Open**

Vendors that submit a proposal in response to this RFP shall be deemed automatically to have consented and irrevocably agreed to keep any such proposal open for six (6) months after the deadline for Vendors' proposal submissions, or for such additional period as the State and any Vendors may agree upon. Rates and fees quoted in a proposal shall remain fixed and binding on the Vendors.

## **C. Contract Term**

The original term of the contract between each successful Vendor and the State shall be five years, with three one-year extension options, each exercisable in OST's sole discretion, subject only to Board approval.

## **D. Designated Contact:**

This RFP process will be managed by the Director of Contributions and Plan Management ("Designated Contact"):

Name: John Meyer  
Title: Director of Contributions and Plan Management  
Address: 820 Silver Lake Boulevard, Suite 100  
City/State: Dover, DE  
ZIP: 19904  
Email: [Treasury\\_RFP@delaware.gov](mailto:Treasury_RFP@delaware.gov)  
Phone: (302) 672-6705

## **E. Submission of Written Questions**

All questions about the RFP shall be submitted to the Designated Contact listed above via e-mail on or before 4:00 p.m., prevailing Eastern time, on December 18, 2020.

Questions should be directly tied to the RFP and asked in consecutive order from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number, heading and subject number to which it relates.

The State will provide written responses to questions from prospective Vendors no later than January 8, 2021. Responses will be placed on <http://bids.delaware.gov>.

## **BACKGROUND**

### **A. The Plans Management Board**

The members of the Board serve as fiduciaries for and have ultimate oversight responsibility for the State's retirement, 529 and "ABLE" plans (collectively, the "Plans"). The Board is composed of 11 members:

- Four (4) public members appointed by the Governor;
- Two (2) state employees appointed by the Governor; and
- Five (5) ex-officio members- the State Insurance Commissioner, the State Treasurer, the Secretary of Education, the Secretary of Finance and the Director of the Office of Management and Budget.

In 2018, the Board approved a new operating structure that established a standing Audit and Governance Committee and a standing Investment Committee. Committee membership includes full Board members and "outside" members selected for their unique subject matter expertise.

The Board meets at least four times a year. Each standing committee also meets at least four times a year.

### **B. The Office of the State Treasurer**

OST serves as the administrative arm of the Board and coordinates all meetings of the Board and its committees. In addition, OST's Contributions and Plan Management division markets and promotes the Plans, oversees vendors and is responsible for the implementation and day-to-day administration of the Plans.

### **C. The Delaware College Investment Plan Trust**

The Delaware College Investment Plan Trust ("Trust"), which was amended and restated in 2018, serves as the vehicle for the 529 Plan. Board members serve as trustees of the Trust.

### **D. The Delaware College Investment Plan**

The 529 Plan is a tax-advantaged college savings vehicle open to both residents and nonresidents. The 529 Plan is currently administered by Fidelity Investments, a group of "Fidelity" entities that includes FMR Co., Inc., FMR LLC and Fidelity Brokerage Services Inc.

The Fidelity platform offers participants a choice of portfolios tailored to a child's age and the ability to customize portfolio selections based on an asset allocation strategy. Withdrawals can

be used for qualified educational expenses. More information on the 529 Plan can be found at: <http://www.fidelity.com/delaware> or in the 529 Fact Kit [available online](#):

[https://www.fidelity.com/bin-public/060\\_www\\_fidelity\\_com/documents/529\\_DE\\_fact-kit.pdf](https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/529_DE_fact-kit.pdf)

In 2019, the Board engaged a regional marketing agency to help promote the 529 Plan within Delaware. The agency's efforts are designed to complement Fidelity's existing marketing obligations and strategies and to test a new brand image for the 529 Plan. In 2020, the Board retained Cammack Retirement Group to provide plan investment advisory and consulting services.

As of June 30, 2020, the 529 Plan held \$682.8 million in assets and had 22,137 active participant accounts.

## **SCOPE OF SERVICES**

The Scope of Services for this RFP is detailed in Appendix B.

## **MINIMUM REQUIREMENTS TO APPLY**

Proposals that do not meet the following minimum requirements, or that do not comply with the specifications or material terms and conditions of this RFP, may be considered non-responsive and rejected. Vendors must clearly demonstrate in their proposals how they meet the following minimum qualifications:

1. Vendor has been in business for at least five (5) years conducting administrative services for college investment, defined contribution or defined benefit plans, including contribution and distribution processing, customer service and recordkeeping-
2. Vendor is affiliated with or utilizes investment managers with at least five (5) years of experience managing asset allocation portfolios and a minimum of \$5 billion in assets under management.

## **RFP ISSUANCE AND SUBMISSION OF PROPOSALS**

### **A. RFP Issuance**

#### **1. Public Notice**

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

#### **2. Obtaining Copies of the RFP**

This RFP is available in electronic form only and as a courtesy, may be found at the following website:

Delaware Office of Management and Budget at <http://www.bids.delaware.gov/>.

**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 Designated Contact. Communications must be submitted electronically to the following email address: Treasury\_RFP@delaware.gov.

**5. Vendors and Legal Counsel**

The State may retain professional services or legal counsel to assist in the review and evaluation of this RFP and the Vendors' responses. Vendors shall not contact the State's professionals or legal counsel on any matter related to the RFP unless so instructed in writing by the Designated Contact. Vendors who make contact in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Vendors currently doing business with the State who require contact with such professionals or legal counsel in the ordinary course of business.

**6. Contact with Other State Employees**

Direct contact with State employees other than the Designated Contact regarding this RFP is expressly prohibited without prior written consent from the Designated Contact. Vendors who directly contact a State employee in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Vendors currently doing business with the State who require contact with State employees in the ordinary course of business.

**7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity currently debarred or suspended from conducting business in the State or any other jurisdiction for any reason may be deemed ineligible to respond to this RFP.

**8. Exclusions**

The State reserves the right to refuse to consider any proposal from a Vendor who itself or its officers or staff:

- 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 integrity or honesty;
- c) Has been convicted or has had a civil judgment entered for a violation of any state or federal antitrust statute;
- d) Has failed without good cause to perform under a program manager or recordkeeping contract; or to perform satisfactorily in accordance with any program manager or recordkeeping contract. Has violated ethical standards set out in law or regulation; and
- e) Any other cause determined by the State to be serious and compelling, and which undermines confidence in the Vendor's ability to perform independently under any resulting consulting contract.

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

The State reserves the right to pre-approve any news or broadcast advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State regarding 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.

**10. RFP Not an Offer**

This RFP does not constitute an offer by the State.

**B. Submission of Proposals**

**1. Proposal Content**

Each proposal 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. The State discourages overly lengthy and costly proposals and prefers that they be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a fully responsive proposal are not desired.

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 shall have no responsibility or liability for a Vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

A Vendor should describe in detail on **Attachment 3** any areas where it will be unable to provide services as requested or required herein. In addition, if a Vendor is able to provide the services exactly as requested or required but believes that there would be benefits (such as cost savings or improved service) to making adjustments to the services outlined, the Vendor should describe the adjustments and the benefits on **Attachment 3**. Acceptance or rejection of any or all exceptions is within OST's sole discretion.

Vendors must respond to all mandatory requirements presented in this RFP. The words "shall," "will," and "must" are used herein to designate mandatory requirements. Failure to respond to a mandatory requirement may, in OST's discretion, result in the disqualification of a Vendor from the RFP process.

## **2. Proposal Delivery**

Proposals must be received **no later than 4:00 p.m., prevailing Eastern time, on January 22, 2021**. Responses received after the proposal due date and time will not be considered.

Upload your proposal at: <https://treasurer-delaware.bonfirehub.com/portal>

Important Notes:

**Logging in and/or uploading the file(s) does not mean the response is submitted. Vendors must successfully upload all the file(s) and must click the submit button before the proposal due date and time.**

Vendors will receive an email confirmation receipt with a unique confirmation number once the submission has been finalized. This will confirm that the proposal has been submitted successfully.

Each submitted item of requested information will only become visible to the State after the proposal due date and time.

If the file is mandatory, you will not be able to complete your submission until the requirement is met.

Uploading large documents may take significant time depending on the size of the file(s) and your internet connection speed. The maximum upload file size is 1000 MB.

Minimum system requirements: Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. Java Script must be enabled.

Please contact Bonfire directly at Support@GoBonfire.com or 1(800) 354-8010, ext. 2 for technical questions or issues related to your submission. You can also visit their help forum at <https://bonfirehub.zendesk.com/hc>.

Any proposal received after the proposal deadline shall not be considered.

### **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 proposal deadline.

### **4. Proposal Costs and Expenses**

The State is not responsible for and will not pay any costs incurred by any Vendor in responding to this RFP, including, but not limited to, costs associated with proposal preparation, printing, and delivery, the interview/presentation process and contract negotiations.

### **5. Late Proposals**

Proposals will be electronically date and time stamped upon receipt. Proposals received after the proposal deadline will not be opened or considered.

### **6. Proposal Opening**

Proposals will be opened by State personnel. Any unopened proposals will be returned to the proposing firm. Bonfire will create a public log containing the names of all Vendors that submitted proposals and the dates and times of the State's receipt of each proposal. Unless required by applicable law, the contents of any proposal shall not be disclosed prior to contract award.

### **7. Non-Conforming Proposals**

The State may, in its discretion, reject any non-conforming proposals. Non-conforming proposals are defined as those that do not meet the material requirements of this RFP. The State shall have the authority and discretion to determine whether an RFP requirement is material, or a mere formality or non-substantive requirement.

## **8. Confidentiality of Documents**

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of a Vendors' proposal will be treated as confidential during the evaluation process and will not be available for review by anyone other than the State and their counsel. There shall be no disclosure of any Vendors' information to a competing Vendor prior to award of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State and its constituent organizations are required to comply with the State of Delaware Freedom of Information Act, 29 *Del. C.* § 10001, *et seq.* ("FOIA"). FOIA requires that the State's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon written request. Once a proposal is received by the State and a decision on a contract award is made, the content of selected and non-selected Vendors' proposals will likely become subject to FOIA's public disclosure obligations.

The State wishes to create a business-friendly environment and procurement process. As such, the State respects that Vendors desire to protect intellectual property, trade secrets and other confidential business information (collectively referred to herein as "confidential business information"). If a Vendor feels that it cannot submit a proposal without including confidential business information, it must adhere to the following procedure or such proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the Vendors' confidential business information may be lost.

In order to allow the State to assess its ability to protect confidential business information, Vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendors may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the submitting Vendors' legal counsel describing the information contained in the documents, representing in good faith that the information is protected from disclosure under FOIA, and briefly stating the reasons that such information is exempt under FOIA.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State will open the envelope to determine whether the procedure described above has been followed. A Vendor's allegation as to its confidential business information shall not be binding on the State; rather, the State shall independently determine the validity of any Vendor's designation as set forth in this section. Any Vendors submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right

and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendors assume the risk that confidential business information included within a proposal may enter the public domain.

## **9. Sub-Contracting**

Subcontracting is not permitted without the State's prior written consent. Any Vendor that submits a proposal contemplating the use of independent contractors or a subcontractor shall identify the purpose for such use, as well as the scope of work and other terms for any such arrangement. All independent contractors and subcontractors must agree in writing to be bound by the terms of the contract between the State and the successful Vendor.

## **10. Discrepancies and Omissions**

Vendors are fully responsible for the completeness and accuracy of their proposals, and for examining this RFP and all attachments, exhibits and addenda. Failure to do so will be at the sole risk of Vendors. Should a Vendor find discrepancies, omissions, or unclear or ambiguous language in this RFP, Vendor should seek clarification from the State pursuant to the question and answer process detailed below. Protests based on any discrepancies, omissions, or unclear or ambiguous language will be disallowed if the same have not been timely raised in and preserved through the question and answer process below.

## **11. RFP Question and Answer Process**

OST will allow written requests for clarification of the RFP. Vendors must submit written questions in the format specified below so as to be received by the Designated Contact by 4:00 p.m., prevailing Eastern time, on December 18, 2020. Questions must be submitted electronically to the following email address: [Treasury\\_RFP@delaware.gov](mailto:Treasury_RFP@delaware.gov).

All questions will be consolidated and answered in a single response that will be posted on the State's website at <http://www.bids.delaware.gov/> by 4:00 p.m., prevailing Eastern time, on January 8, 2021, or such other date and time as may be prescribed by the State. Vendors names will not be attributed to questions in OST's response.

Questions should be submitted in a standalone Microsoft Word document in the following format:

Section number  
Paragraph number  
Page number  
Text (of passage being questioned)

Questions that deviate from this format may be rejected by the State, in its discretion.

## **12. State's Right to Reject Proposals**

The State 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 RFP specifications or contained in a Vendor's response), to assess the merits and qualifications of each proposal and Vendor, to solicit new or modified proposals on the same project, as may be necessary or appropriate or in the best interest of the State.

## **13. State's Right to Cancel Solicitation**

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

A Vendor's participation in this RFP process may result in the State selecting the Vendor to engage in discussions and negotiations of a formal contract. The commencement of such negotiations does not signify, and may not be interpreted as, a commitment by the State to execute a contract or continue negotiations. The State may terminate negotiations at any time and for any reason, or for no reason at all.

## **14. State's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* § 6986, the State may award multiple contracts to two or more Vendors if the State makes a determination that such action is necessary or appropriate or in the best interest of the State.

## **15. Notification of Withdrawal of Proposal**

Vendors may modify or withdraw its proposal by written request, provided that both the proposal and subsequent request is received by the Designated Contact prior to the Proposal Deadline. A withdrawn proposal may be revised and re-submitted and will be considered timely as long as the revised proposal is received by the Proposal Deadline.

All proposals received prior to, and which have not been withdrawn by, the Proposal Deadline shall become firm offers and shall not be revocable after that time.

## **16. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted at <http://www.bids.delaware.gov>.

## **17. Exceptions to the RFP**

Any exceptions to the RFP or any attachments, exhibits or addenda, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 3** and submitted with a proposal by the proposal deadline. Vendors that fail to timely and otherwise adequately preserve and assert exceptions shall be deemed to have waived all such exceptions and related arguments. The State has discretion with respect to the acceptance or rejection of exceptions.

## **18. Exceptions to the State's Standard Terms**

Attached hereto as **Appendix A** is a standard form of Professional Services Agreement ("PSA") and related exhibits. The terms of the PSA will govern the contractual relationship between a Vendor and the State. Any exceptions to the PSA, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 3**. Vendors shall provide a redlined version of the PSA ("Redline") reflecting all requested changes. Vendors that fail to timely and otherwise adequately preserve and assert exceptions to the PSA shall be deemed to have waived all such exceptions and related arguments. The State has discretion with respect to the acceptance or rejection of PSA exceptions.

## **19. Award of Contract**

The issuance of a contract award ("Award") is subject to approval by the State. The State shall have the sole right to select the successful Vendors and approve the issuance of any Award and the terms of any PSA. The State may (a) approve the issuance of an Award to a Vendor other than the Vendor who submitted the lowest priced proposal, (b) issue multiple Awards, or (c) withdraw the RFP and issue no Award. No Award or contract resulting from this RFP process shall be effective unless and until authorized by the appropriate State entity.

An Award, if any, will be communicated to the successful Vendors and published only after (a) the State authorizes the issuance of an Award, and (b) the State and each such Vendor executes a formal PSA on terms acceptable to the State. No Vendors will acquire any legal or equitable rights or privileges until the occurrence of both events.

The Award, the PSA and all attachments and exhibits, including all pricing information, and amounts and other details concerning any payments made to a successful Vendor shall be matters of public record subject to disclosure under FOIA.

## PROPOSAL REQUIREMENTS AND EVALUATION

### A. Required Information

1. Vendors shall provide the following information with their proposals in the order listed below. Failure to respond to any request for information within this RFP may result in rejection of the proposal.
  - a) Tab A: Transmittal Letter.
  - b) Tab B: Questionnaire(s). Provide a detailed set of responses to the questions posed in **Attachment 1**. All Vendors must respond to **Attachment 1**. Responses should be both complete and concise.
  - c) Tab C: Confidential Information Form. Vendors should identify any material information that is considered confidential using the form of **Attachment 2**. Any information not within this form is automatically subject to FOIA.
  - d) Tab D: Exception Form. Provide a detailed listing of any exceptions to the RFP, including all attachments and appendices, including the PSA and its exhibits, using the form included as **Attachment 3**. Successful Vendors who do not take exceptions as required are deemed to have consented and irrevocably agreed to the terms of the RFP.
  - e) Tab E: Business References. Provide at least three business references using the form provided in **Attachment 4**.
2. Prior to Award, the successful Vendors shall furnish the State with proof of (i) all necessary business licenses, including a valid State business license, (ii) certification(s) necessary to perform services identified herein, and (iii) proof of insurance required under the PSA attached hereto as **Appendix A**.

### B. Proposal Evaluation

#### 1. Initial Screening

The Designated Contact and/or designated OST staff shall perform an initial screening of all proposals submitted by qualified Vendors and evaluate them for timeliness and compliance with the minimum qualifications and other requirements set forth herein. OST shall have discretion with respect to any such determination. Proposals that pass the initial screening shall be forwarded to the Evaluation Team (as defined below) for scoring and evaluation as provided herein.

## 2. The Evaluation Team

An evaluation team (“Evaluation Team”) that may be composed of representatives from OST, the Board and other State entities will evaluate qualified Vendors’ proposals meeting all RFP requirements based on the quantitative and qualitative criteria set forth below. Neither the lowest price nor highest scoring proposal will necessarily be selected. OST may in its discretion remove or add members of the Evaluation Team.

## 3. Evaluation Criteria

Vendors must review the evaluation criteria below and provide responses that address the criteria. The Evaluation Team will not be able to make assumptions about the Vendors’ capabilities; therefore, responses should be detailed and concise within the proposal.

The State has outlined the services it will require in the Scope of Services. In formulating responses, Vendors are encouraged to suggest additional or modified services in their proposals if such additional or modified services will provide a benefit to the State.

Proposals that meet submission requirements of the RFP will be evaluated and scored based on the criteria and points system set forth in the table below.

<b>Evaluation Criteria</b>	<b>Point Value</b>
Experience and reputation	20
Investment Management Expertise	20
Demonstrated ability to administer 529c or benefit plans	20
Demonstrated ability to provide a positive customer experience.	20
Pricing. Fees as a cost to participant	20
<b>TOTAL POINTS</b>	<b>100</b>

#### **4. Proposal Clarification**

The Evaluation Team may communicate with a Vendor in order to clarify uncertainties or gain better understanding of a proposal. The Evaluation Team may require or permit Vendors to modify or supplement their proposals as a result of such communication. Vendors must provide all requested information in a timely manner, which shall mean on or before any deadline established by the Evaluation Team.

#### **5. Communication with References and Past or Present Clients**

The Evaluation Team may communicate with all references provided by a Vendor on **Attachment 4** and may use information gained thereby in the evaluation process. In addition, the Evaluation Team may communicate with any known past or present client of a Vendor outside of the reference list, and any information gained may be used in the evaluation process. Vendors that submit a proposal in response to this RFP shall be deemed to have (a) waived any confidentiality or other restrictions that may limit in any way a reference or client's ability to convey information relevant to the evaluation process and (b) to all such communications with references or clients.

#### **6. Oral Presentations**

The Evaluation Team, after consultation with the appropriate State entities, may invite selected Vendors to make in-person or virtual oral presentations to the Evaluation Team. Presentations are tentatively scheduled for the week of January 25, 2021. *Any costs associated with oral presentations will be borne by the Vendors.* The State requests that all individuals who are expected to be assigned to this engagement be in attendance.

### **Contract Process**

#### **A. Formal Contract**

The Vendor that is selected as the finalist and invited via written notification from the State ("Invitations") to enter into negotiations concerning Delaware College Investment Plan services will be expected to enter into a formal contract with the State in the form of the PSA attached here to as **Appendix A** ("Contract"). Vendors' attempt to negotiate pricing or other material Contract terms that were not disclosed and detailed in the Vendors' responses may result in the termination of negotiations with, and/or the disqualification of, such Vendors.

#### **B. Modification of PSA**

The State, in its discretion, may consider and accept proposed modifications or additions to the PSA, whether or not raised in an exception, subject to any necessary approvals.

### **C. Time Frame**

A Vendor who receives an Invitation must execute a Contract within twenty (20) business days from the date of the Invitation, unless such period is extended by the State, in its discretion. If no Contract has been executed by the applicable deadline, the State may in its discretion cancel the Invitation and enter negotiations with another Vendor.

### **D. Inception of Services**

Absent OST's prior written request or approval, no Vendor is to begin providing services prior to the issuance of an Award.

### **E. Cancellation of Award**

If a Vendor that receives an Award fails to commence providing consulting services when due under the Contract, the State, without liability, may cancel and annul the Award and terminate any Contract. In such event, an Award under this RFP may be made to another Vendor.

### **F. Collusion or Fraud**

Vendors may not restrain competition by agreement to offer a fixed price, or otherwise. By responding to this RFP, each Vendor shall be deemed to have represented and warranted that: (i) its proposal is not made in connection with any competing Vendor submitting a separate response to this RFP; (ii) its approval is in all respects fair and without collusion or fraud; (iii) 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 (iv) no employee or official of the State, the Board or OST participated directly or indirectly in the Vendor's proposal preparation.

If at any time, whether prior to or after the issuance of an Award, the State determines that any of the foregoing representations was untrue when made or subsequently became untrue, the State may, without liability, cancel and annul the Award and terminate any Contract. In such event, an Award under this RFP may be made to another Vendor.

### **G. Lobbying and Gratuities and Contingency Fees**

As required by 29 *Del. C.* § 6903(b), the successful Vendor is deemed to have sworn under oath that the Vendor has not employed or retained any company or person to solicit or secure a Contract by improperly influencing the State in this procurement process. In addition, the Vendor represents and warrants that it has not directly or indirectly paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for Vendor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from an Award or Contract.

For breach or violation of the foregoing oath, representation or warranty, the State, in its discretion and without liability, shall have the right to cancel and annul any Award and terminate any Contract, or deduct from the Contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

#### **H. Solicitation of State Employees**

During the RFP process and for the term of the Contract, Vendors shall not, directly or indirectly, solicit any employee of the State to leave the State's employ in order to accept employment with the Vendors, its affiliates, or any person acting in concert with Vendors, without prior written approval of the State.

## VIII. Attachments and Appendices

The following items are provided for use in your response. Attachments are required forms to be submitted with your proposal as described in this RFP. Appendices are provided as additional detail or information to assist in your proposal response.

### 1. Attachments

<u>Attachment 1</u>	Vendor Questionnaire
<u>Attachment 2</u>	Confidential Information Form
<u>Attachment 3</u>	Exception Form
<u>Attachment 4</u>	Business References

### 2. Appendices

<u>Appendix A</u>	Form of Professional Services Agreement
<u>Appendix B</u>	Scope of Services

## **Attachment 1: Vendor Questionnaire**

CONTRACT NUMBER: **TRE-CPM-20102**

### **Relevant Experience**

- Provide a history of your organization as it pertains to defined benefit, defined contribution, and college investment plans. Provide a matrix showing revenues, assets under management, and participant count for each line of business.
- For non-incumbents, describe your transition experience, provide a sample transition plan, and identify your transition team members for this engagement. Specifically identify every defined benefit, defined contribution and college investment plans transitioned in the last five years.
- Provide an organizational chart showing all key personnel who will be responsible for all aspects of the Program.
- Name the key individuals who would be responsible for providing services for the Program. Provide a brief resume including background and experience information on each individual, emphasizing specific experience with college savings programs. In the event of a departure of a key individual from your Company that would be directly associated with the Program, address back-up procedures and steps to ensure continuity of servicing the Program
- Please indicate the year your Company began providing services to state college savings programs, and complete the following table, as applicable, as of June 30, 2020 for each state college savings program for which your Company has served as Program Manager or service provider.
- Please describe your organization's diversity and inclusion program, including goals, priorities, and metrics established for the current and forthcoming calendar year (if applicable) in the table on the following page:

Program	Contract Term	Service Provided	Total Managed	
			AUMs	Accounts

- If the Program Manager manages a state college savings program for another state, how will you differentiate the Program for prospective customers from the other(s) that you manage? Identify any restrictions on your ability to market the Program, locally and nationally. What steps will you take to prevent conflicts with other college investment programs-managed by your Company?
- Does the Program Manager have a retail presence in Delaware? If so, provide the specific locations, and indicate whether there are any plans to expand in Delaware. If not, describe how you currently market college investment programs or other consumer-facing products and services in Delaware
- Describe your willingness and ability to support, including monetarily, a national campaign to heighten awareness of college investment programs. Will you make Delaware’s Program a “national” plan? Will you incorporate Delaware’s new branding into your efforts?

**Investment Management**

- Please provide the investment options you propose for the Program. Please differentiate between the proposed age-based option(s), static investment multi-fund portfolios, and single fund static options. For each investment option listed above, please provide the following information, as applicable, for each underlying investment.

Underlying Fund or Strategy	Weighted (%)	Investment Option	Asset Class	Ticker	Expense Ratio	Benchmark
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- Describe your manager/fund selection process for the underlying funds of the age-based and risk-based portfolios. Do you have a separate team dedicated to manager research? If not, who is responsible for investment manager/fund selection? Please also describe your flexibility around replacing underlying investments when there is an interest from the Board to remove a fund, particularly if it is a proprietary fund.
- Describe your risk management oversight and the integration of risk management across your organization. Detail the reporting chain for the risk team when issues are identified. Describe the role of senior management in risk management and the establishment of formal risk limits for the portfolios being offered.
- Would your proposed investment lineup include either a stepped or progressive glide path design? Outline the typical portfolio allocation process; how often are allocations revisited in the strategic glidepath? Would your proposed glidepath solution include tactical asset allocation?
- Provide your current and longer-term view on the following three strategic decisions:
  - a. Use of active/passive management
  - b. U.S./non-U.S. equity split (as it relates to global market cap weightings)
  - c. U.S./foreign bond split (as it relates to global market cap weightings)

**Administration**

- List the administrative reports that you propose to provide including the types of data and frequency necessary to keep the Board and staff apprised of the status of the Program. Samples of these reports should be included in your response.
- For each type of plan that you administer, describe how contributions are processed; (i.e., through payroll deduction or clearinghouse transactions); and provide the number of programs using workplace enrollment, the total number of participants, the total number of accounts by process and the monthly average contribution. Please specify whether different

minimum initial and subsequent contribution amounts apply to accounts with automatic contributions.

- Provide the following information with respect to data backup procedures:
  - a. Detailed description of your daily backup procedures
  - b. Description of your business continuity, business recovery and disaster control plans including the location of any disaster recovery facilities
  - c. The testing schedule and the date you last performed a disaster recovery test
- Has the Program Manager implemented a cyber security plan? If so, please provide a detailed description of the plan. Describe your security methods in use for protecting personal identifying data and account owner financial information, including protections for telephonic and online inquiries and transactions.
- What ideas do you have to grow the Program? How will you help us retain and improve upon our current Morningstar rating?
- Will your website allow for the use of Delaware's Program branding?

### **Participant Experience**

- Describe any previous relevant experience providing customer service for a state college savings program (or similar retail program) defined benefit, defined contribution, and college investment plans and indicate whether dedicated customer service staff will be assigned to the Program.
- Describe the process used to handle incoming customer calls, specifying whether or not a live representative answers the call, and if not, how do you provide routing to speak to live representatives and the ability to leave messages for return calls?
- Where are your United States-based customer service center located and how many customer service representatives work there? How do you handle peak volume periods? How many customer service representatives will be specifically dedicated to this Program?
- Provide the following for the past 12 months, if applicable:
  - Number of days to process a new account
  - Number of days to process 99% of withdrawal requests

- Maximum time the system was not available during peak hours (i.e. when live representatives were available), and during non-peak hours
- Number of days to fulfill customer requests for information
- Percent of contribution by check processed within one business day
- Wait time (average number of minutes a participant is on hold)
- Do you provide participants with account projections at college age? Do you provide a college savings calculator? Do you provide information on distribution options and strategy?

**1. Pricing Proposal**

Please provide a proposed fee structure for the services described in **Appendix B** for the initial contract period and any extension periods for each of the components being submitted in the Vendors' proposal.



**Attachment 3: Exception Form**

CONTRACT NUMBER: **TRE-CPM-20102**

Proposals must include all exceptions to the specifications, terms or conditions contained in this solicitation, including all attachments and appendices. If Vendor is submitting the proposal without exceptions, please state so below.

By checking this box, Vendor acknowledges that it takes no exception to the specifications, terms or conditions found in this solicitation, including the terms of the PSA.

<b>Paragraph # and page #</b>	<b>Exceptions to specifications, terms or conditions</b>	<b>Proposed alternative</b>

**Note: Use additional pages as necessary.**

**Attachment 4: Business References**  
**CONTRACT NUMBER: TRE-CPM-20102**

List a minimum of three business references. At least two (2) of the references should be from government entities. Business references should include the following information:

- Business name and mailing address
- Contact name, phone number and email address
- Number of years doing business with
- Type of work performed

Please do not list any State entity, officer or employee as a business reference.

If you have held a State contract within the last 5 years, provide a separate list of the contract(s), describe the scope of work performed and include the name, title, phone number and email address for your primary contact for each engagement.

**PROFESSIONAL SERVICES AGREEMENT FOR  
COLLEGE INVESTMENT PLAN PROGRAM MANAGER AND ADMINISTRATION  
SERVICES**

This Professional Services Agreement (“**Agreement**”) is entered into by and between the Office of State Treasurer (“**OST**”) for the State of Delaware (the “**State**”), on behalf of the Plans Management Board (the “**Board**”), and [\_\_\_\_\_] (“**Vendor**”).

WHEREAS, the State desires to retain Vendor to provide all necessary and appropriate recordkeeping, investment management and administrative services for the State’s college investment plan under section 529 of the Internal Revenue Code (the “**529 Plan**”);

WHEREAS, Vendor desires to provide the Services on the terms set forth in the Agreement;

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

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

**1. Services and Term.**

- 1.1. Vendor shall provide the State with all necessary and appropriate transition, recordkeeping, investment management and administrative services for the 529 Plan, including those services as set forth herein and/or as specified on **Exhibit 1** (Statement of Work) to this Agreement (collectively, “**Services**”). Vendor shall serve as a co-fiduciary in connection with the provision of Services.
- 1.2. The initial term of the Agreement shall begin on the date this Agreement is fully executed, or as may be otherwise agreed upon by the parties, and shall extend for five years from that date. The State has three one-year extension options. OST, in its discretion, may exercise each option at any time prior to the expiration of the initial or extended term, as the case may be, subject only to Board approval of any such extension.
- 1.3. Vendor shall meet and confer with OST, the Board and/or any committee of the Board at such times and places as OST, the Board or a committee may reasonably request. Vendor, if requested by OST, shall participate in meetings with other State agencies concerning the Services or plan-related issues. Vendor shall keep OST staff informed of progress and provide updates to OST and the Board on the status of the Services. This interface shall include regular telephone communication, exchange of written data and analysis and other interaction as requested by OST or the Board.

**2. Payment for Services and Expenses.**

- 2.1. Vendor is entitled to receive compensation for Services from participants solely as provide on **Exhibit 2**. The State shall have no obligation to compensate Vendor for the performance of Services.
- 2.2. Vendor is solely responsible for ensuring that all Services are completed for the agreed upon fees.
- 2.3. All expenses incurred in the performance of Services are Vendor's responsibility. Vendor shall not be reimbursed for any expenses incurred by Vendor in the performance of the Services, including, but not limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.4. The State shall not be liable for the payment of federal, state or local sales, use or excise taxes, including any interest and penalties from any related deficiency, which may become due and payable by Vendor as a consequence of the Agreement.

### **3. Performance Schedule.**

- 3.1. Vendor is responsible for completing the transition of Services and providing Services to participants and beneficiaries in a timely fashion. A preliminary transition and Services schedule is set out on **Exhibit 3**. The parties shall work together to craft a final transition and Services schedule. The final project schedule shall be agreed upon and substituted as a replacement **Exhibit 3** within 30 days from the date the Agreement is fully executed by the parties.
- 3.2. Any delay of Services or change in the sequence of Services, whether on the preliminary or final project schedule, must be approved in writing by OST.
- 3.3. In the event that Vendor fails to complete the Services or any portion thereof within the time specified in **Exhibit 3**, or with such additional time as may be granted in writing by OST, or fails to perform any Service as specified on **Exhibit 3**, or any extensions thereof, Vendor shall forfeit and promptly return to OST those amounts specified on **Exhibit 3**. Unless otherwise directed by the Board, OST shall credit all amounts so forfeited and returned to the administrative fund of the 529 Plan trust.

### **4. Responsibilities of Vendor.**

- 4.1. Vendor shall be solely responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services, including the quality of any third-party solutions. In performing the Services, Vendor shall adhere to generally accepted professional and technical standards and comply with all applicable federal, state and local laws, ordinances, codes and regulations.
- 4.2. Vendor shall be responsible for ensuring that all Services, including all solutions and deliverables furnished pursuant to the Agreement, comply with the standards promulgated by the State's 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. If any Service furnished pursuant to the Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be liable and shall indemnify, defend and hold harmless the Indemnified Parties (as defined below) for all liabilities, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by an Indemnified Party resulting from or attributable to Vendor's failure to comply with DTI standards and requirements, including those set forth on **Exhibits 4-6**.

- 4.3. Vendor shall execute and comply with the requirements of the Confidentiality (Non-Disclosure) and Integrity of Data Agreement attached as **Exhibit 4**.
- 4.4. It shall be Vendor's duty to assure that Vendor does not compromise the security, confidentiality, or integrity of information maintained by the State. In providing Services, Vendor will meet or exceed the standards set forth in the Top 20 Critical Security controls located at <http://www.sans.org/critical-security-controls/>.
- 4.5. Vendor shall be responsible for all security breaches involving State data (including participant and beneficiary personal identifiable information) caused by its employees and contract employees, its subcontractors, and the employees and contract employees of its subcontractors, and Vendor shall indemnify, defend and hold harmless the Indemnified Parties from any and all liabilities, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), arising out of such breaches.
- 4.6. Multifunction peripherals must be hardened when used or connected to the State's network.
- 4.7. Electronic information storage devices (hard drives, tapes, diskettes, compact disks, USB, multifunction peripherals, *etc.*) shall be disposed of in a manner corresponding to the classification of the stored information, up to and including physical destruction.
- 4.8. Vendor shall execute and comply with the Cloud Services Terms and Conditions Agreement attached as **Exhibit 5**.
- 4.9. Vendor shall execute and comply with the Data Usage Terms and Conditions Agreement attached as **Exhibit 6**.
- 4.10. It shall be the duty of Vendor to assure that all Services are technically sound and in conformance with all applicable federal, state and local statutes, codes, ordinances, resolutions and other regulations, rules and industry standards applicable to the Services. Vendor will not provide a Service that infringes on any copyright, trademark, patent or other intellectual property rights. Vendor shall, without additional compensation, immediately correct or revise any errors or omissions in the solution and shall indemnify, defend and hold harmless the Indemnified Parties for all liabilities, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by an

Indemnified Party resulting from or attributable to Vendor's failure to comply with this Section.

- 4.11. The State's knowledge, review, approval, or acceptance of, or payment for, any Service shall not be construed to operate as an admission of any fact or circumstance, or a waiver of any rights under the Agreement or otherwise, and Vendor shall be and remain liable in accordance with the terms of the Agreement and applicable law for all damages caused by Vendor's breach or negligent performance or failure to perform under the Agreement.
- 4.12. Vendor shall appoint a senior employee, reasonably acceptable to OST, who will manage the transition of Services to Vendor and act as the single point of contact to OST regarding transition-related Services. Vendor also shall appoint a senior employee, reasonably acceptable to OST, who will manage the performance of post-transitions Services and act as the single point of contact to OST once services have been transitioned to Vendor.
- 4.13. Upon receipt of written notice from OST that a senior or other employee of Vendor is unsuitable for good cause, Vendor shall remove such employee from the performance of Services and substitute in his/her place an employee suitable to OST.
- 4.14. Unless legally prohibited, Vendor shall promptly notify OST's Designated Contact (as defined below) in writing of any investigation, examination or other proceeding involving Vendor, or any key personnel or designated staff of Vendor or a subcontractor, commenced by any regulatory or law enforcement agency and involving allegations of fraud or illegal conduct.
- 4.15. Vendor agrees that its officers and employees will cooperate with OST in the performance of Services and will be available for consultation with OST and the Board or its committees upon reasonable request.
- 4.16. Vendor has or will retain such employees as it may need to perform the Services.
- 4.17. Vendor will not use OST's, the Board's or the State's name, either express or implied, in any of its advertising or sales materials without OST's express written consent.
- 4.18. Vendor represents that it is properly licensed, registered and authorized to transact business in the State.
- 4.19. Vendor will provide to OST audited or unaudited financial statements, as requested by OST.

## **5. OST Responsibilities/Representations.**

- 5.1. OST agrees that its officers and employees will cooperate with Vendor in the performance of Services and will be available for consultation with Vendor upon reasonable request.

## **II. Ownership of Work Product and Data.**

- 5.2. All materials, information, documents, reports and other work product, whether finished, unfinished, or draft, developed, prepared or completed by Vendor for the State relating to the Services shall become the property of the State and shall be delivered upon request. The State shall have the right to reproduce and disclose all work product related to the Agreement. The State's rights under this Section shall survive termination of the Agreement.
- 5.3. The State shall retain title and interest to all data and documents related to the Services. Upon termination of the Agreement, and for a period of six (6) months thereafter, OST and the State shall have access to all State data and documents and related activity and other reports available in connection with the Services. Promptly after such six (6) month period, all State data and documents and related activity and other reports shall be retained and returned or destroyed in accordance with Section 7.8.

## **6. Confidential Information of the State.**

- 6.1. "Confidential Material," as used herein, means all agreements and other documents and data that contain confidential commercial, financial, consumer, or other confidential information of the State, whether or not such agreements or other documents are marked "confidential" or otherwise designated as confidential by OST.
- 6.2. Confidential Material shall be used by Vendor solely for purposes of executing its duties and obligations under the Agreement. Vendor may disclose Confidential Material only to those Vendor employees who have a need to access Confidential Material in the scope of their employment for Vendor, and who have been informed, understand and acknowledge in writing that Confidential Material is highly sensitive and confidential and must be held in strictest confidence.
- 6.3. Confidential Material shall not be copied or reproduced without the express written permission of OST, except for such copies as may reasonably be required for Vendor to execute its duties and obligations under the Agreement. Except as contemplated by the Agreement, Vendor shall not store or aggregate in a data base or other electronic storage means any Confidential Material; provided, however, that Vendor is permitted to store Confidential Material in physical or electronic files in accordance with this Section 7 while executing its duties under the Agreement and for a reasonable period of time thereafter, after which the Confidential Materials, including all physical and electronic copies, shall be returned or destroyed in accordance with Section 7.8.
- 6.4. Except as expressly permitted in this Section 7, Confidential Material shall not be disclosed to any individuals or third parties without the prior written consent of OST, unless such disclosure is required by law. Vendor shall immediately notify OST in writing of Vendor's receipt of a court order, subpoena or discovery requests seeking or ordering the production, disclosure or inspection of any Confidential Material. Vendor shall, at the request of OST, object to any such order, subpoena or discovery and shall take all other measures that may reasonably be necessary to protect against the unwarranted production, disclosure or

inspection of Confidential Material. In the event disclosure of Confidential Material is compelled or otherwise required by law, Vendor shall mark all documents submitted in connection with any such disclosure so as to indicate the confidential nature of the material and the State's interest therein.

- 6.5. This Section 7 shall not restrict the disclosure or use of Confidential Material that:
  - a. is in the public domain at the time of disclosure or thereafter enters the public domain through no breach of the Agreement;
  - b. is in the possession of Vendor without restrictions when received;
  - c. has been lawfully obtained or is lawfully obtainable without restrictions from a source other than the State through no breach of the Agreement;
  - d. has been developed independently by Vendor and without reliance upon Confidential Material.
- 6.6. Vendor shall take commercially reasonable steps to restrict access to and otherwise safeguard the confidentiality and integrity of Confidential Material at all times, including, without limitation, the implementation of electronic security procedures and other measures designed to ensure that all Confidential Material is properly stored and protected at all times.
- 6.7. Vendor shall immediately disclose to OST the discovery of any security breach or suspicious intrusion involving Confidential Material and shall identify the type and amount of Confidential Material that was compromised or disclosed.
- 6.8. Unless otherwise agreed, within six (6) months from the termination of the Agreement, all Confidential Material, regardless of form, shall, at OST's option, be returned to OST or destroyed in accordance with all applicable law, orders, rules and regulations and industry best practices. Any electronic data or documents destroyed or deleted under this Section 7.8 shall be permanently deleted and shall not be recoverable, according to the National Institute of Standards and Technology's approved methods. If requested, Vendor shall provide a destruction certificate to OST listing the type and contents of electronic records or physical documents destroyed or permanently deleted under this Section 7.8. Notwithstanding the foregoing, Vendor may retain State data or documents for any period if and as required by applicable law; provided, however that Vendor shall thereafter store and protect such data and documents as required by the Agreement, the applicable provisions of which shall survive termination, and delete or destroy all such data and documents at the conclusion of such period.
- 6.9. The State shall have no obligation to disclose Confidential Material. The State may, in its discretion, provide or refuse to provide Confidential Material requested by Vendor.

- 6.10. Vendor understands and agrees that the State may suffer irreparable harm in the event that Vendor or its employees fail to comply with their obligations hereunder and that monetary damages may not be adequate to compensate the State for such breach. Vendor agrees that the State, in addition to other remedies available to it at law or in equity for actual damages, shall be entitled to seek injunctive relief to enforce the terms of this Section 7.

## **7. Warranty.**

- 7.1. Vendor agrees to correct or re-perform any Services not in compliance with this Agreement.
- 7.2. Third-party software solutions or hardware or other products within the scope of the Agreement are warranted under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products sold, licensed or offered by Vendor in connection with the provision of the Services, if any, Vendor shall pass through or assign to the State all rights Vendor obtains from the manufacturers and/or vendor of such products and services (including warranty and indemnification rights), to the extent that such rights are assignable. To the extent such rights are not assignable, Vendor shall honor all such third-party software and hardware warranties and indemnification obligations.

## **8. Indemnification; Limitation of Liability.**

- 8.1. Vendor shall indemnify, defend and hold harmless OST, the Board and the State and their respective officers, committees, members, agents and employees (the "Indemnified Parties") from any and all liability, suits, actions, claims or damages, together with all reasonable costs and expenses (including attorneys' fees), arising out of Vendor's breach of the Agreement, or the negligent, reckless, intentional or other tortious, fraudulent, illegal, or unlawful conduct of Vendor or any subcontractor or independent contractor, or their respective officers, employees or agents, arising out of or related to the Agreement ("Claims").
- 8.2. If OST notifies Vendor in writing of a Claim against an Indemnified Party, including, without limitation, any Claim based on Vendor's disclosure of or failure to safeguard any personal financial or other private or confidential information, Vendor will defend such Claim at Vendor's expense if so requested by OST, in OST's sole discretion. Vendor will pay all costs and damages that may be finally awarded against an Indemnified Party.
- 8.3. Neither OST, the Board, the State, nor any other department, agency or instrumentality thereof, nor any committee, officer, member, agent or employee of the foregoing, shall have any liability to Vendor or any other party for fees (including attorneys' fees), expenses, suits, actions, claims or damages, whether direct or indirect, compensatory or punitive, actual or consequential, in or for actions, claims, causes of action or rights, including indemnification rights, arising out of or related in any way to the Agreement.

- 8.4. Notwithstanding anything to the contrary herein, no provision of this Agreement shall constitute a waiver or limitation of any right of OST, the Board or the State that may exist under applicable law.
- 8.5. Notwithstanding anything to the contrary herein, to the extent available under applicable law, OST, the Board and the State and their respective committees, officers, members, agents and employees expressly reserve all rights, claims, arguments, defenses and immunities, including, without limitation, claims or defenses based on sovereign immunity, qualified immunity and other statutory or common law rights, claims, defenses or immunities; provided, however, that Vendor shall have the right to seek to enforce the Agreement in the courts of this State.

## 9. Insurance.

- 9.1. Vendor shall maintain the following insurance during the term of the Agreement:
- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law;
  - b. Comprehensive General Liability—\$1,000,000 per occurrence/\$3,000,000 per aggregate;
  - c. Professional Liability—\$5,000,000 per occurrence/\$5,000,000 per aggregate;
  - d. Miscellaneous Errors and Omissions—\$1,000,000 per occurrence/\$3,000,000 per aggregate;
  - e. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 for each person and \$300,000 for each accident as to bodily injury and \$25,000 as to property damage to others; and
  - f. Excess/Umbrella policy - Excess/Umbrella \$10,000,000 total (sits above underlying worker's compensation and employer's liability, general liability, professional liability, and business automotive liability).
- 9.2. In addition to the insurance policies required by Section 10.1, Vendor must maintain cyber security liability insurance coverage with limits of \$5,000,000 per occurrence/\$5,000,000 per aggregate for loss resulting from a data breach. The policy shall be issued by an insurance company with an A.M. Best Rating of A- VII and shall remain in place for the term of the Agreement. Notwithstanding anything in **Exhibit 5**, Vendor shall immediately notify OST when Vendor becomes aware of a security breach involving State data.
- 9.3. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered to OST.

- 9.4. Before any work is performed pursuant to the Agreement, the Certificate of Insurance and/or copies of the insurance policies specified in Sections 10.1 and 10.2 shall be provided to OST. The certificate holder is as follows:

**Office of the State Treasurer  
820 Silver Lake Blvd., Suite 100  
Dover, DE 19904**

- 9.5. In no event shall OST, the Board, the State, or their respective committees, officers, members, agents or employees, be named as an additional insured on any policy required under the Agreement.

## **10. Independent Contractor.**

- 10.1. It is understood that in the performance of the Services, Vendor is an independent contractor, not an agent or employee of OST, the Board or the State, and shall furnish such Services in its own manner and method, except as required by the Agreement.
- 10.2. Except as provided in Section 4, above, Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the Services; provided, however, that Vendor will, subject to scheduling and staffing considerations, attempt to honor OST's request for specific individuals.
- 10.3. Vendor shall be solely responsible for, and shall indemnify, defend and hold the Indemnified Parties harmless from all matters relating to the payment of Vendor's employees and any subcontractor's or independent contractor's employees, including compliance with Social Security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.
- 10.4. Vendor acknowledges that Vendor and any agents or employees employed by Vendor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the compensation, benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, pension benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits.
- 10.5. Vendor shall be responsible for providing liability insurance for its personnel.
- 10.6. As an independent contractor, Vendor has no authority to bind or commit OST, the Board or the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, or agency relationship between the parties for any purpose.

## **11. [Reserved.]**

## **12. Termination.**

- 12.1. The Agreement may be terminated by either party for default, which shall mean the failure of the other party to fulfill a material obligation under this Agreement, through no fault of the terminating party, but only after the other party is given:
  - a. Not less than 30 calendar days' written notice of intent to terminate and opportunity to cure; and
  - b. An opportunity for consultation with the terminating party prior to termination.
- 12.2. The Agreement may be terminated in whole or in part by the State for its convenience, but only after Vendor is given sixty (60) calendar days' written notice of intent to terminate.
- 12.3. Vendor is entitled to compensation earned for Services provided as of the effective date of termination.
- 12.4. In connection with any notice issued under this Section 13, the State may immediately retain another vendor to perform the Services. Vendor shall at all times cooperate in the transition and shall, at no cost to the State, perform such services as OST or the Board shall determine are necessary or appropriate to enable the transition of work to a successor vendor or vendor. Vendor's obligation to provide transition services shall survive termination and shall continue until such date as is communicated in writing to Vendor that such services are no longer needed.
- 12.5. If after termination for breach it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for convenience.
- 12.6. The termination of the Agreement shall not terminate any rights or obligations that are reasonably intended to extend beyond termination, including Vendor's indemnification and confidentiality obligations.
- 12.7. The rights and remedies of OST, the Board and the State provided in this Section are in addition to any other rights and remedies provided by law or under the Agreement.
- 12.8. Gratuities.
  - a. OST may, by written notice to Vendor, terminate the Agreement without liability if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of OST, the Board or the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of the Agreement.
  - b. In the event the Agreement is terminated as provided in Section 13.8.a, the State shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of the Agreement by Vendor.

- 12.9. The validity and enforcement of the Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. If such funds are not so appropriated, (a) OST may immediately terminate the Agreement without liability, and (b) the Agreement shall be terminated without liability as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available.

### **13. Assignment; Subcontracts.**

- 13.1. Any attempt by Vendor to assign or otherwise transfer any interest in the Agreement without the prior written consent of OST shall be void.
- 13.2. Vendor's employees shall perform all Services, unless OST contents in writing to Vendor's request to use temporary staff, independent contractors or a subcontractor. Neither approval by OST of any such request, nor OST's acceptance of any solution or deliverable, or payment of any invoice, shall relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the Services. All temporary staff, independent contractors and subcontractors shall adhere to and be bound by all applicable provisions of this Agreement, including all exhibits.
- 13.3. Vendor shall be and remain liable for all damages to OST, the Board and the State caused by the negligent performance or non-performance of work under the Agreement by any use temporary staff, independent contractors or a subcontractor.
- 13.4. The compensation due to Vendor pursuant to **Exhibit 2** shall not be affected by OST's approval of Vendor's request to use temporary staff, independent contractors or a subcontractor.

### **14. Complete Agreement.**

- 14.1. This Agreement and its exhibits, which are incorporated herein by reference, constitute the entire agreement between the State and Vendor with respect to the subject matter of the Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of the Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of the Agreement.
- 14.2. If the scope of any provision of the Agreement is too broad in any respect to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 14.3. If any term or provision of the Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or

provisions hereof or the whole of the Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

- 14.4. Each exhibit, except as otherwise agreed, shall be a complete statement of its subject matter and shall supplement, modify and supersede the terms and conditions of the Agreement.

## **15. Miscellaneous Provisions.**

- 15.1. Neither this Agreement, nor any exhibit, may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom enforcement is sought.
- 15.2. The delay or failure by either party to exercise or enforce any of its rights under the Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 15.3. Vendor covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that conflicts or would conflict in any manner or degree with the performance of Services required under the Agreement. Vendor further covenants that, in the performance of said Services, no person having any such interest shall be employed.
- 15.4. Vendor acknowledges that OST, the Board and the State will not subsidize or tolerate discrimination. Vendor recognizes that its refusal to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, may result in the State declaring Vendor in breach of the Agreement, terminating the Agreement without liability and/or taking such additional action as may be warranted under the circumstances.
- 15.5. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State shall have the right to annul the Agreement without liability.
- 15.6. The Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 15.7. At the option of OST, the parties shall attempt in good faith to resolve any dispute arising out of or relating to the Agreement promptly by negotiation between officials or executives who have authority to settle the controversy. All offers, promises, conduct and statements,

in each case relating to dispute resolution, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible in any proceeding involving the parties; provided, however, that evidence that is otherwise admissible or discoverable may not be rendered inadmissible merely because it was the subject of discussion in the course of negotiation.

- 15.8. Any disputes, claims or controversies arising out of or relating to the Agreement that are not resolved through resolution pursuant to Section 16.7, may be submitted to mediation, if OST so elects in its sole discretion. Any such proceedings held pursuant to this provision shall be governed by the State's laws, and venue shall be in this State. The parties shall maintain the confidential nature of the proceedings and shall keep the terms of any resulting settlement or award confidential to the extent permissible under applicable law. Each party shall bear its own costs of mediation, including attorneys' fees and half of the mediator's fees and expenses.
- 15.9. Neither party to the Agreement shall be liable for damages resulting from delayed or defective performance of its obligations under the Agreement when such delays or defective performance arise out of causes beyond the reasonable control and without the negligence or willful misconduct of the party.
- 15.10. The Agreement (including all exhibits and content) and all information relating to Vendor's compensation for Services are public documents subject to mandatory disclosure under 29 *Del. C.* § 10001-10007. In the event that OST is required by law (any statute, governmental rule or regulation, or judicial or governmental order, judgment or decree) to disclose to the public any information or document reasonable designated as "confidential" by Vendor, OST will, to the extent reasonably practicable prior to disclosure, give Vendor prior written notice of such disclosure or potential disclosure. Vendor's designation as to confidentiality is not binding on OST, the Board or the State.
- 15.11. The provisions of the Agreement are for the sole benefit of the parties hereto. The Agreement confers no rights, benefits or claims upon any person or entity not a party hereto.

## **16. Assignment of Antitrust Claims.**

As consideration for the award and execution of the Agreement, Vendor hereby grants, conveys, sells, assigns and transfers to the State all of Vendor's right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States or this State relating to the Services or the Agreement.

## **17. Governing Law.**

The Agreement shall be governed by and construed in accordance with Delaware law, without regard to conflict of laws rules or principles. Vendor consents to jurisdiction and venue in this State.

**18. Notices.**

Any and all notices required by the provisions of the Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

If to OST:

Attn: [\_\_\_\_\_] ]  
[\_\_\_\_\_] (“Designated Contact”)  
820 Silver Lake Blvd., Suite 100  
Dover, DE 19904

If to Vendor:

Attn:

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

**OFFICE OF THE STATE  
TREASURER, on behalf of the PLANS  
MANAGEMENT BOARD**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**[Vendor]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

The following five exhibits are attached and shall be considered part of this Agreement:

- **Exhibit 1 – Statement of Work**
- **Exhibit 2 – Payment Schedule**
- **Exhibit 3 – Performance Schedule**
- **Exhibit 4 – Confidentiality (Non-Disclosure) and Integrity of Data Agreement**
- **Exhibit 5 – Cloud Services Terms and Conditions Agreement**
- **Exhibit 6 – Data Usage Terms and Conditions Agreement**

Capitalized terms used but not defined in an exhibit shall have the meanings ascribed to such terms in the Agreement.

**Exhibit 1: Statement of Work**

**Exhibit 2: Payment Schedule**

Vendor shall be entitled to compensation for Services provided under the Agreement as provided below.

**Exhibit 3: Project Schedule**

**Exhibit 4: Confidentiality (Non-Disclosure) & Integrity of Data Agreement**

**CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT**

DTI 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 DTI. All data generated from the original source data shall be the property of the State. The control of the disclosure of those data shall be retained by the State and DTI.

I/we, as an employee(s) of \_\_\_\_\_ or officer of my firm, when performing work for the State, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the State’s 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 the State. 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 Vendor and to any others working under the Vendor’s direction.

I, the undersigned, hereby affirm that I have read and understand the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by its terms.

**Vendor Name:** \_\_\_\_\_

**Authorizing Official Name (print):** \_\_\_\_\_

**Authorizing Official Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**Exhibit 5: Cloud Services Terms and Conditions Agreement**

***PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE***

Contract # \_\_\_\_\_, between State of Delaware and \_\_\_\_\_

dated \_\_\_\_\_

	Public Data	Non Public Data	CLOUD SERVICES (CS) TERMS
<p><b>Vendor must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data. Clause CS2 is mandatory for all engagements involving non-public data. Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data.</b></p>			
CS1-A	<input type="checkbox"/>	<input type="checkbox"/>	<p><b>Security Standard Compliance Certifications:</b> Vendor shall meet, and provide proof of, one or more of the following Security Certifications.</p> <ul style="list-style-type: none"> <li>• CSA STAR – Cloud Security Alliance – Security, Trust &amp; Assurance Registry (Level Two or higher)</li> <li>• FedRAMP - Federal Risk and Authorization Management Program</li> </ul>
CS1-B	<input type="checkbox"/>	<input type="checkbox"/>	<p><b>Background Checks:</b> Vendor must warrant that they will only assign employees and subcontractors who have passed a state-approved criminal background checks. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract, have no convictions, pending criminal charges, or civil suits related to any crime of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. Vendor shall promote and maintain an awareness of the importance of securing the State's information among Vendor's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the Agreement and grounds for immediate termination and denial of further work with the State.</p>
CS1-C	<input type="checkbox"/>	<input type="checkbox"/>	<p><b>Responsibility:</b> Vendor shall be responsible for ensuring its employees' and any subcontractors' compliance with the security requirements stated herein.</p>
CS2	<input type="checkbox"/>	<input type="checkbox"/>	<p><b>Breach Notification and Recovery:</b> Vendor must notify the State immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State data. If data is not encrypted (<i>see</i> CS3, below), Delaware Code (6 <i>Del. C.</i> §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of personally identifiable information by Vendor or its subcontractors. Vendor will provide notification to persons whose information was breached without</p>

	Public Data	Non Public Data	CLOUD SERVICES (CS) TERMS
			unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State. Should Vendor or its employees or subcontractors be liable for the breach, Vendor shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State shall not agree to any limitation on liability that relieves Vendor or any person or entity from responsibility for its own negligence or conduct, or to the extent that it creates an obligation on the part of the State to hold any person or entity harmless.
<b>CS3</b>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Data Encryption:</b> Vendor shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where Vendor stores personally identifiable information or other sensitive, confidential information, it shall encrypt this non-public data at rest. Vendor's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security guidelines. Vendor and the State will negotiate mutually acceptable key location and key management details. Vendor shall maintain mandatory cyber security liability insurance coverage for the duration of the Agreement.
<b>CS4</b>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Notification of Legal Requests:</b> Vendor shall contact OST upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. With regard to State data and processes, Vendor shall not respond to subpoenas, service of process, and other legal requests without first notifying OST, unless prohibited by law from providing such notice.

The terms of this document shall be incorporated into the Agreement. Any conflict between this document and the aforementioned Agreement shall be resolved by giving priority to the Agreement.

FOR OFFICIAL USE ONLY	<input type="checkbox"/> <b>CS4 (Public Data)</b>
	<input type="checkbox"/> <b>CS1-A and CS4 (Non-Public Data) OR</b> <input type="checkbox"/> <b>CS1-B and CS1-C and CS4 (Non-public Data)</b>
	<input type="checkbox"/> <b>CS2 (Non-public Data)</b> <input type="checkbox"/> <b>CS3 (SaaS, PaaS – Non-public Data)</b>

**VENDOR Name/Address (*print*):**

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**VENDOR Authorizing Official Name (*print*):**

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**VENDOR Authorizing Official Signature:**

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**Date:**

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**Exhibit 6: Data Usage Terms and Conditions Agreement**

Contract # \_\_\_\_\_, between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

	<b>Public Data</b>	<b>Non Public Data</b>		<b>DATA USAGE (DU) TERMS</b>
<b>DU1</b>	√	√	<b>Data Ownership</b>	The State shall own all right, title and interest in its data that is related to the Services. Vendor shall not access State user accounts, or State data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at OST or the State’s written request. All information obtained or generated by Vendor in connection with the Agreement shall become and remain property of the State.
<b>DU2</b>	√	√	<b>Data Usage</b>	<p>Vendor shall comply with the following conditions. At no time will any information belonging to or intended for the State be copied, disclosed, or retained by Vendor or any third party for subsequent use. Vendor will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data. Vendor may not use any information collected in connection with the Services for any purpose other than fulfilling a Service. Protection of personally identifiable information, privacy, and sensitive data shall be an integral part of the business activities of Vendor to ensure that there is no inappropriate or unauthorized use of State information at any time. Vendor shall safeguard the confidentiality, integrity, and availability of State information.</p> <p>Only duly authorized Vendor staff will have access to State data and may be required to obtain security clearance from the State. No party related to Vendor may retain any data for subsequent use that has not been expressly authorized by the State.</p>

	<b>Public Data</b>	<b>Non Public Data</b>		<b>DATA USAGE (DU) TERMS</b>
<b>DU3</b>	√	√	<b>Termination and Suspension of Service</b>	<p>Unless otherwise provided in the Agreement, in the event of termination of the Agreement, Vendor shall implement an orderly return (in CSV or XML or another mutually agreeable format), or, shall guarantee secure disposal of State data.</p> <p><i>Termination of the Agreement:</i> In the event of termination, Vendor shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State data for a period of six (6) months after the effective date of the termination. Within this timeframe, Vendor will continue to secure and back up State data covered under the Agreement. After such 6-month period, Vendor shall have no obligation to maintain or provide any State data. Thereafter, unless legally prohibited, Vendor shall dispose securely of all State data in its systems or otherwise in its possession or control, as specified herein.</p> <p><i>Post-Termination Assistance:</i> The State shall be entitled to reasonable post-termination assistance with respect to the transition of Services.</p>
<b>DU4</b>		√	<b>Data Disposition</b>	<p>Unless otherwise provided in the Agreement, at no time shall any data or processes that either belong to or are intended for the use of the State be copied, disclosed, or retained by Vendor.</p> <p>Unless otherwise provided in the Agreement, when required by the State, Vendor shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. Vendor shall provide written <a href="#">certificates of destruction</a> to OST.</p>
<b>DU5</b>		√	<b>Data Location</b>	<p>Vendor shall not store, process, or transfer any non-public State data outside of the United States, including for backup and disaster recovery purposes. Vendor may permit its personnel offshore access to the data, as long as the data remains onshore.</p>

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU6		√	<b>Breach Notification and Recovery</b>	Vendor must notify the State immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State data. If data is not encrypted ( <i>see CS3, below</i> ), Delaware Code (6 <i>Del. C.</i> §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of personally identifiable information by Vendor or its subcontractors. Vendor will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State. Should Vendor or its employees or subcontractors be liable for the breach, Vendor shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State shall not agree to any limitation on liability that relieves Vendor or any person or entity from responsibility for its own negligence or conduct, or to the extent that it creates an obligation on the part of the State to hold any person or entity harmless.
DU7		√	<b>Data Encryption</b>	Vendor shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where Vendor stores personally identifiable information or other sensitive or confidential information, it shall encrypt this non-public data at rest. Vendor’s encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security guidelines. Vendor and the State will negotiate mutually acceptable key location and key management details. Vendor shall maintain mandatory cyber security liability insurance coverage for the duration of the Agreement.

The terms of this document shall be incorporated into the Agreement. Any conflict between this document and the aforementioned Agreement shall be resolved by giving priority to the Agreement.

FOR OFFICIAL USE ONLY  DU 1 - DU 3 (Public Data Only) OR  DU 1 - DU 7 (Non-public Data)

VENDOR Name/Address (*print*):

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VENDOR Authorizing Official Name (*print*):

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VENDOR Authorizing Official Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX B: SCOPE OF SERVICES**

The Program Manager is expected to provide a variety of services. The following section outlines the expectations broken down into the different service categories, including Program Conversion and Transition, Program Administration and Compliance, Recordkeeping, Participant Experience, Investment Management, and Marketing and Distribution.

### **A. Program Conversion and Transition**

In the event of a conversion, the new Program Manager will provide transition-related services.

- Develop a detailed timeline and plan for conversion of assets, including mapping and communications to account owners.
- Provide a detailed communication plan to ensure timely communications to existing account owners during a transition period.
- Provide a seamless transition of account information and processes for account owners.
- Reconcile cash and NAVs to ensure all assets are accounted for prior to and after conversion.
- Ensure that all account\_assets are continuously invested throughout the conversion and implementation process.
- Provide a transition team with a lead\_transition manager at its expense.
- Take all steps necessary to achieve a transition date that is agreed upon by the Board and the new Program Manager

In the event of a conversion to a successor Program Manager, the outgoing Program Manager will provide transition-related services.

- Cooperate in the development of a detailed timeline and plan for conversion.
- Cooperate in the transition of account information and processes for account owners.
- Assist with the reconciliation of cash and NAVs to ensure all assets are accounted for prior to and after conversion.
- Ensure that all account assets are continuously invested through-the conversion-

- Provide a transition team with a lead transition manager at its expense.
- Take all steps reasonably necessary to achieve a transition date that is agreed upon by the Board and the new Program Manager.

**B. Program Administration and Compliance**

- Manage the program in compliance with Section 529 and all other applicable state and federal statutes, rules and regulations, including those promulgated by the Securities and Exchange Commissions (the “SEC”) and the Municipal Rulemaking Board (“MSRB”). Administer and operate the Program in accordance with the rules, regulations, policies and directives of the Board, including the Investment Policy Statement for the 529 Plan.
- Have a formal privacy policy in place that adheres to the most stringent privacy policy standards in the industry including state and federal standards that protect the confidentiality of account information.
- Report contributions, distributions and any other Program activity as may be required to be reported to the Internal Revenue Service (the “IRS”), the SEC, the MSRB or any other federal, state or local agency of competent jurisdiction.
- Act as a custodian co-fiduciary of Program assets and provide custodial, fund administration and fund accounting services.
- Create and produce all applicable Program documents, including enrollment and account maintenance forms and offering documents in compliance with all state and federal regulations, and in compliance with general Section 529 or mutual fund best practices. Materials shall be available online and in print.
- Provide the Board with reports on all specified business metrics and other aspects of the Program as will be specified in the Management Agreement and other ad hoc reports that may be requested by the Board or OST, including quarterly reports on the Program and Program activities.
- Attend quarterly all Board and Committee meetings and prepare and deliver present quarterly reports quarterly reports on the Program and Program activities.
- Implement and abide by a state-of-the-art fraud prevention program.
- Provide all documents requested in connection with and otherwise assist with audits of the Program.
- Cooperate with OST and the Board’s consultant as needed on any Program administration or compliance issues.

### **C. Recordkeeping**

- Provide recordkeeping services in compliance with Section 529 and all other applicable state and federal statutes, rules and regulations, including those promulgated by the SEC and the MSRB
- Generate and mail all applicable tax reports, including 1099Qs to the appropriate recipients.
- Generate and mail all necessary Program correspondence, including, confirmation statements, quarterly and annual statements and make available current account information when requested.

### **D. Participant Experience**

#### **Customer Service**

- Act as first and main point of contact for all account owners.
- Establish and maintain accounts, collect payments, process withdrawals on a daily basis, and provide accurate, easy to understand confirmation, quarterly and annual account statements and other customer communications.
- Maintain the ability to receive contribution via check, ACH, direct deposit, and NSCC.
- Allow account owners to request withdrawals via telephone, online and mail.
- Maintain robust quality control procedures to minimize error rates.
- Ensure the confidentiality and privacy of all prospects, account owners and beneficiaries, as applicable.
- Manage all incoming and outgoing correspondence for the Program.
- Provide access to enrollment materials through an automated fulfillment system.
- Provide information on distribution options and strategies.
- Maintain a system for tracking and reporting customer satisfaction and complaints. Evaluate customer satisfaction on an ongoing basis and provide reports on a quarterly basis to the Board.

Address customer complaints in a timely fashion and provide reports on a quarterly basis to the Board.

### **Call Center**

- Maintain a comprehensive call center in the United States with a toll-free number(s) for the Program available during normal business hours for all four U.S. continental time zones.
- The call center shall be staffed with enough call center representatives who are licensed or registered in accordance with applicable law.
- Enable individuals to obtain or request Program materials online and through the call center.
- Have a method to identify, track and report on all call interactions with an account owner, including the time and date of a call, the identity of the call center representative who spoke with the caller, the reason for the call and the call's resolution.

### **Self-Servicing Website**

- Provide, maintain and update the website for the Program ensuring that it is specifically planned, designed and search-engine optimized.
- Provide state of the art security and password protocols, including two-factor authentication.
- Permit a secure online account opening process, which allows prospective account owners to start, save and complete enrollment process, and includes the ability to contribute when enrolling online.
- Provide ability to view all accounts owned by the same account owner from a single log-on organized by beneficiary.
- Permit account owners to perform the following transactions online, at a minimum
  - Contribute online from a variety of sources
  - Add or change contributions
  - Request duplicate statements
  - View account assets, investment performance and registration information
  - View quarterly statements, annual statements and confirmation statements
  - View year-to-date contributions and transactions

- Change mailing address

#### **E. Investment Management**

The Program Manager will manage investments as a fiduciary for the Board, account owners and beneficiaries in accordance with the Program’s Investment Policy Statement (“IPS”) and the Management Agreement.

- Offer investment options with fee structures that appeal to a wide range of investors with various risk tolerance levels and contribution levels.
- Offer an appropriate asset allocation strategy for each age- or risk-based portfolio.
- Offer investment funds to the Board for consideration when existing investment funds need to be replaced or when there is a need for additional investment options.
- Enable meetings between the Board and portfolio/underlying fund managers (or their direct staff) as may be appropriate to review, at a minimum, market conditions, strategy and investment performance.
- Collaborate with the Board’s investment consultant as needed on investment-related issues for the Programs.
- Use institutional share classes where available and lowest cost share classes in all other cases. Regularly review and disclose the fees and fee structures in place to ensure that the Program provides competitive fees and is fully transparent.
- Provide quarterly reporting materials with detailed analysis of the underlying funds, portfolios, and portfolio positioning commentary.

#### **F. Marketing and Distribution**

- The Program Manager will develop and implement a marketing strategy that will provide the broadest visibility across potential investors, nationally and within Delaware.

- Develop promotional materials using the State's Program branding and assure compliance with applicable laws relating to such materials.
- Provide professional or financial resources to market the Program to employers, community groups and financial advisors
- Develop and execute a multi-year marketing plan dedicated to the promotion of the Program in Delaware and nationwide, subject to the Board's approval.
- Develop and maintain applicable websites to provide current Program information.
- Track on an ongoing basis and report to the Board on a quarterly basis the effectiveness of outreach efforts, marketing initiatives, activities and literature relative to peers and national data.