

Appendix B: Professional Services Agreement

CONTRACT NUMBER: TRE1602-INVESTCUST

PROFESSIONAL SERVICES AGREEMENT for DIRECT DEPOSIT BANKING SERVICES ISSUED BY THE CASH MANAGEMENT POLICY BOARD

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

WHEREAS, Delaware desires to obtain those services set out in the Statement of Work on Exhibit 1 to this Agreement _____ on behalf of Delaware's Cash Management Policy Board ("Board");

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

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

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

1. Services and Term.

- 1.1. Vendor shall perform for Delaware the services as specified on Exhibit 1 to this Agreement, attached hereto and made a part hereof, as well as such services or work as Delaware may request from time to time and for which the parties shall mutually agree (collectively, "Services").
- 1.2. If and when Delaware desires any addition or deletion to the Services or a change in the Services, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. To the extent set out herein, pricing of changes shall be consistent with those established within this Agreement. Any such changes in pricing shall be reflected in an amended and updated Exhibit 2 to this Agreement. No work for which additional compensation may be charged by Vendor shall be furnished, without the prior written authorization of Delaware.
- 1.3. The initial three-year term of this Agreement shall be from January 1, 2017 through December 31, 2019 provided that the initial term can be extended at Delaware's sole option for up to two additional one-year terms upon written notice to Vendor no later than 60 days prior to the expiration of the initial term or an optional term, as the case may be.

2. Payment for Services and Expenses.

- 2.1. Delaware will pay Vendor for the performance of Services in accordance with the payment schedule set out on Exhibit 2 attached hereto and made a part hereof.
- 2.2. Delaware's obligation to pay Vendor for the performance of Services will not exceed the fee amounts set out on Exhibit 2. It is expressly understood that the Services must be completed by Vendor and it shall be Vendor's responsibility to ensure sufficient competency and efficiency so that all Services are completed for the agreed upon fees.
- 2.3. Unless otherwise provided on Exhibit 2, all payments will be sent to the Vendor's identified address on record with Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.4. Vendor shall submit quarterly invoices to Delaware in sufficient detail to identify the Services provided during the previous quarter. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event that Delaware disputes all or any portion of an invoice, Delaware agrees to provide Vendor with a detailed statement of Delaware's position on the invoice, or disputed portion of the invoice, within thirty (30) days of receipt.
- 2.5. Unless provided otherwise in Exhibit 1, all expenses incurred in the performance of the Services are to be paid by Vendor. If Exhibit 1 specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the Services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.6. Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.
- 2.7. Delaware shall have the right to set aside or subtract from any payment to be made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's provisions of Services hereunder.
- 2.8. Invoices shall be submitted to:

**Director – Finance & Investment Services
Office of the State Treasurer
820 Silver Lake Blvd., Suite 100
Dover DE 19904**

3. Time Schedule.

- 3.1. A project schedule is set out on Exhibit 3, if applicable, attached hereto and made part hereof.
- 3.2. Any delay of Services or change in the sequence of Services, as applicable, must be approved in writing by Delaware.
- 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 Delaware, or fails to perform the Services, or any separable part thereof, with such

diligence as will insure its completion within the time specified in Exhibit 3 or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Exhibit 2.

4. Responsibilities of Vendor.

- 4.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the Services, Vendor shall follow practices consistent with 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, additional work, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by Delaware'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 this Agreement. If any Service, additional work product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
 - 4.2.1 Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished to Delaware. Vendor shall follow practices consistent with generally accepted professional and technical policies and standards. Vendor shall be responsible for ensuring that all Services, products, and deliverables furnished to Delaware are consistent with practices utilized by, or policies and standards promulgated by, DTI published at <http://dti.delaware.gov/information/standards-policies.shtml>. If any service, product or deliverable furnished by Vendor does not conform to DTI's policies, standards or general practices, Vendor shall at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI's policies, standards or practices.
 - 4.2.2 DTI is responsible for safeguarding the confidentiality and integrity of data in Delaware's 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 Delaware agency data shall not be modified without the prior knowledge and written authorization of DTI. All data generated from the original source data, shall be the property of Delaware. The control of the disclosure of those data shall be retained by Delaware and DTI.

Vendor is required to agree to the requirements in the Confidentiality (Non-Disclosure) and Integrity of Data Agreement ("Data Agreement"), which is attached as Exhibit 4 and made a part of this Agreement. Vendor employees, individually, may be required to sign the Data Agreement prior to beginning any work.

- 4.2.3 As computer, network, and information security are of paramount concern, Delaware wants to ensure that computer/network hardware and software do not compromise the security of its IT infrastructure. Therefore, Vendor, is guaranteeing that any system or software meets or exceeds the Top 20 Critical Security controls located at: <http://www.sans.org/critical-security-controls/>.
- 4.2.4 It shall be Vendor's duty to assure that all products of its effort do not cause, directly or indirectly, any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of information maintained by Delaware. Vendor's agreement shall not limit or modify, liability for information security breaches, and Vendor shall indemnify and hold harmless Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by such information security breaches that have not been previously paid to Vendor.
- 4.2.5 Multifunction peripherals must be hardened when used or connected to the network. They should be configured to harden the network protocols used, management services, processing services (print, copy, fax, and scan), logging, and physical security. Care shall be taken to ensure that any Delaware non-public data is removed from memory before service calls and/or equipment disposal.
- 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.
- 4.2.6 Vendor shall be responsible for complying with the Terms and Conditions for Cloud Providers and External Hosting listed in Exhibit 5.
- 4.3. It shall be the duty of the Vendor to assure that all Services are technically sound and in conformance with all pertinent federal, state and local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work product.
- 4.4. Permitted or required approval by Delaware of any Services by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of such work. Delaware's review, approval, acceptance, or payment for any of Vendor's Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 4.5. Vendor shall appoint a senior employee who will manage the performance of Services and act as the single point of contact to the Board and Delaware. All of the Services shall be performed by such employee, or by Vendor's associates and employees under the direct personal supervision of such employee.

- 4.6. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work originally assigned to the diverted project staff at no cost to Delaware. Selected replacement staff are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of Services and substitute in his/her place an employee suitable to Delaware.
- 4.7. Vendor shall furnish to Delaware's Designated Contact (as defined in Section 19 below) copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 4.8. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of Services and will be available for consultation with Delaware at such reasonable times with advance notice so as to not conflict with their other responsibilities.
- 4.9. Vendor has or will retain such employees as it may need to perform the Services. Such employees shall not be employed by Delaware or any political subdivision of Delaware.
- 4.10. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 4.11. Vendor and all subcontractors represent that they are properly licensed and authorized to transact business in Delaware as provided in 30 *Del. C.* §2502.
- 4.12. Vendor will provide financial statements to Delaware as requested, whether or not the vendor is a privately-held or publicly-held company.

5. Delaware Responsibilities.

- 5.1. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of Services and will be available for consultation with Vendor at such reasonable times with advance notice so as to not conflict with their other responsibilities.
- 5.2. The Services performed by Vendor shall be subject to review for compliance with the terms of this Agreement by Delaware's Designated Contact.
- 5.3. The Designated Contact may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation. The review by Delaware's Designated Contact may be reported in writing to the Vendor but shall not relieve Vendor from the responsibility for the professional and technical accuracy of all Services delivered under this Agreement.

6. Work Product.

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the Services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's Designated Contact upon completion or termination of this Agreement, whichever comes first. Delaware shall have the right to reproduce all documentation provided in connection with or otherwise supplied pursuant to this Agreement.
- 6.2. Vendor may retain title and interest to the data furnished and/or generated by Vendor pursuant to this Agreement but only to the extent that retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the Services. Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* §10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

- 8.1. Vendor warrants that the Services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any Services or correct any other work product not in compliance with this warranty.
- 8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), to the extent that such rights are assignable.

9. Indemnification; Discharge of Liability.

- 9.1. Vendor shall indemnify and hold harmless Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of the negligent or other wrongful conduct of the Vendor, its agents or employees, or Vendor's breach of any material provision of this Agreement.
- 9.2. If Delaware notifies Vendor in writing of a third party claim against Delaware that any work product of Vendor developed, designed or delivered in connection with this Agreement infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware.

10. Insurance.

- 10.1. Vendor shall maintain the following insurance during the term of this Agreement:
- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law;
 - b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate;
 - c. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate;
 - d. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate; and
 - 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.
- 10.2. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to Delaware in accordance with the policy provisions.
- 10.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies specified in Section 10.1 and its subsections, referencing the contract number stated herein, shall be filed with Delaware. The certificate holder is as follows:
- Stephen McVay**
Director – Finance & Investment Services
Office of the State Treasurer
820 Silver Lake Blvd., Suite 100
Dover DE 19904
- 10.4. In no event shall Delaware be named as an additional insured on any policy required under this Agreement.

11. Independent Contractor.

- 11.1. It is understood that in the performance of the Services, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such Services in its own manner and method except as required by this Agreement.
- 11.2. 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 it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- 11.3. Vendor shall be solely responsible for, and shall indemnify, defend and hold Delaware harmless from all matters relating to the payment of its employees, including compliance with Social Security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

- 11.4. Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees' Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.
- 11.5. Vendor shall be responsible for providing liability insurance for its personnel.
- 11.6. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, or fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

- 12.1. Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.
- 12.2. In the event Delaware suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of 30 days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware, contingent on appropriated funds and approval by Delaware.

13. Termination.

- 13.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
 - a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- 13.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:
 - a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with Delaware prior to termination.

- 13.3. If termination for default is effected by Delaware, Delaware will pay Vendor that portion of compensation which has been earned as of the effective date of termination, but:
- a. No amount shall be allowed for anticipated profit on performed or unperformed Services or other work, and
 - b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
 - c. Upon termination for default, Delaware may take over the work and perform or cause to be performed the same to completion by agreement with another party or otherwise.
 - d. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 11.2.
- 13.4. If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.
- 13.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.6. Gratuities.
- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
 - b. In the event this Agreement is terminated as provided in Section 13.6(a) hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
 - c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.7. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of Delaware requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.
- 13.8. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall cease at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

14. Assignment; Subcontracts.

- 14.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void.
- 14.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 14.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.
- 14.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- 14.5. The compensation otherwise due to Vendor pursuant to Exhibit 2 shall not be affected by Delaware's approval of the Vendor's request to subcontract.

15. Complete Agreement.

- 15.1. This Agreement and its Exhibits shall constitute the entire Agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 15.2. If the scope of any provision of this 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.
- 15.3. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
- 15.4. Each Exhibit, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

16. Miscellaneous Provisions.

- 16.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits required and other relevant costs incurred in the performance of this Agreement.
- 16.2. 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 this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 16.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 16.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said Services no person having any such interest shall be employed.
- 16.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private 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 Delaware declaring Vendor in breach of the Agreement, terminating the Agreement, and designating Vendor as non-responsible.
- 16.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this Agreement without liability or at its discretion deduct from the Agreement price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 16.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 16.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Public Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor's business office during normal business hours.
- 16.9. At the option of Delaware the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. All offers, promises, conduct and statements, 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 for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable may not be rendered inadmissible. If the matter is not resolved by negotiation or, alternatively, Delaware elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below.

- 16.10. Any disputes, claims or controversies arising out of or relating to this Agreement, and not resolved through resolution pursuant to Section 16.9, may be submitted to mediation by a mediator selected by Delaware for resolution. Delaware reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.
- 16.11. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law or at equity.
- 16.12. Pursuant to Regulation S-P adopted by the Security Exchange Commission, all non-public personal information provided by Delaware to Vendor under this Agreement shall be kept confidential by Vendor and not disclosed to others, except to the extent disclosure is (i) permitted by Regulation S-P or authorized by Delaware; (ii) required by applicable law or judicial or regulatory process; or (iii) necessary to carry out the purposes of this Agreement. All recommendations, advice, or other work product of Vendor developed under the terms of this Agreement and disclosed to Delaware, shall be treated as confidential by Delaware, except as permitted or required by applicable law or judicial or regulatory process to be disclosed.

17. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by Delaware, Vendor hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the goods or Services and other work product purchased or acquired by Delaware pursuant to this Agreement.

18. Governing Law.

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

19. Notices.

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

DELAWARE:
Office of the State Treasurer
Attn: Stephen McVay (“Designated Contact”)
820 Silver Lake Blvd., Suite 100
Dover, DE 19904

VENDOR:

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

**STATE OF DELAWARE:
Office of the State Treasurer**

Witness

Signature

Typed or printed name

Title

Date

VENDOR:

Witness

Signature

Typed or printed name

Title

Date

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

- Exhibit 1 – Statement of Work **[Incorporate Fully Negotiated Scope of Services]**
- Exhibit 2 – Payment Schedule **[Incorporate Fully Negotiated Fee Schedule]**
- Exhibit 3 – Project Schedule **[Incorporate Fully Negotiated Project Schedule – if applicable]**
- Exhibit 4 -- Confidentiality (Non-Disclosure) and Integrity of Data Agreement
- Exhibit 5 -- Cloud Computing & Offsite Hosting Standards

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

CONTRACT NUMBER: **TRE1602-INVESTCUST**

CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT

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

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

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

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

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

Vendor Name: _____

Authorizing Official Name (print): _____

Authorizing Official Signature: _____

Date: _____

Exhibit 5: Cloud Computing & Offsite Hosting Standards

CONTRACT NUMBER: TRE1602-INVESTCUST

NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE State of Delaware Cloud and/or Offsite Hosting Specific Terms and Conditions

Terms and Conditions Clauses 1-13 are mandatory for every engagement. Exceptions will be considered non-compliant and non-responsive.	
1	Data Ownership: The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The Service Provider shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request.
2	Data Protection: Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions: a) All information obtained by the Service Provider under this contract shall become and remain property of the State of Delaware. b) At no time shall any data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware.
3	Data Location: The Service Provider shall not store or transfer non-public State of Delaware data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of Delaware data remotely only as required to provide technical support.
4	Encryption: a) The Service Provider shall encrypt all non-public data in transit regardless of the transit mechanism. b) For engagements where the Service Provider stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest . Examples are social security number, date of birth, driver’s license number, financial data, federal/state tax information, and hashed passwords. The Service Provider’s encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2 , Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the Cloud and Offsite Hosting Policy . Additionally, where encryption of data at rest is not possible, vendor must describe existing security measures that provide a similar level of protection.

5	<p>Breach Notification and Recovery: Delaware Code requires public breach notification when citizens' personally identifiable information is lost or stolen. Reference: 6 Del. C. § 12B-102. Additionally, unauthorized access or disclosure of non-public data is considered to be a breach. The Service Provider will provide notification without unreasonable delay and all communication shall be coordinated with the State of Delaware. When the Service Provider or their sub-contractors are liable for the loss, the Service Provider shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless.</p>
6	<p>Notification of Legal Requests: The Service Provider shall contact the State of Delaware 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. The Service Provider shall not respond to subpoenas, service of process, and other legal requests related to the State of Delaware without first notifying the State unless prohibited by law from providing such notice.</p>
7	<p>Termination and Suspension of Service: In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware data in CSV or XML or another mutually agreeable format. The Service Provider shall guarantee the subsequent secure disposal of State of Delaware data.</p> <p>a) Suspension of services: During any period of suspension or contract negotiation or disputes, the Service Provider shall not take any action to intentionally erase any State of Delaware data.</p> <p>b) Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any State of Delaware data for a period of 90 days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession or under its control as specified in section 7d) below. Within this 90 day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract.</p> <p>c) Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p> <p>d) Secure Data Disposal: When requested by the State of Delaware, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State of Delaware.</p>
8	<p>Background Checks: The Service Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents.</p>
9	<p>Data Dictionary: Prior to go-live, the Service Provider shall provide a data dictionary in accordance with the State of Delaware Data Modeling Standard.</p>
10	<p>Security Logs and Reports: The Service Provider shall allow the State of Delaware access to system security logs that affect this engagement, its data and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.</p>

11	Contract Audit: The Service Provider shall allow the State of Delaware to audit conformance including contract terms, system security and data centers as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State’s expense. Such reviews shall be conducted with at least 30 days advance written notice and shall not unreasonably interfere with the Service Provider’s business.
12	Sub-contractor Disclosure: The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, who will be involved in any application development and/or operations.
13	<p>Operational Metrics: The Service Provider and the State of Delaware shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. Examples include but are not limited to:</p> <ul style="list-style-type: none"> a) Advance notice and change control for major upgrades and system changes b) System availability/uptime guarantee/agreed-upon maintenance downtime c) Recovery Time Objective/Recovery Point Objective d) Security Vulnerability Scanning

ACKNOWLEDGEMENT

This signed document is hereby incorporated into Contract Number TRE1602-INVESTCUST, an Agreement between the State and the Vendor to provide Investment Custody Services. By signing this Attachment, the vendor agrees to abide by all of the above Terms and Conditions.

Vendor Name: _____

Authorizing Official Name (print): _____

Authorizing Official Signature: _____

Date: _____