

**REQUEST FOR PROPOSALS FOR
PUBLIC FUNDS INVESTMENT CUSTODY SERVICES
ISSUED BY THE OFFICE OF THE STATE TREASURER**

CONTRACT NUMBER: TRE21103 - INVESTCUST

I. Overview

The Office of the State Treasurer (“OST”), on behalf of the Cash Management Policy Board (the “Board,” and together with OST, the “State”), issues this request for proposals (the “RFP”) seeking investment custody services for State funds subject to Board oversight. The selected firm will serve in a fiduciary capacity. The RFP is issued pursuant to 29 *Del. C.* §§ 6981, 6982 and 6986.

VENDOR ELIGIBILITY: Any prospective vendor (“Vendor”) that does not meet the following criteria will not qualify for this RFP process:

1. At least \$1 billion in total market capitalization.
2. At least \$500 billion in total tax-exempt assets under trust/custody.
3. At least \$250 billion in corporate and public funds under custody.
4. Financial institutions with both a branch network and employees in Delaware are exempt from the above market capitalization and assets under management criteria.
5. Minimum of 10 years of experience in providing trust/custody services for institutional investors.

A. Timetable

The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP Published	April 9, 2021
Deadline for Vendor Questions	April 23, 2021
Deadline for State Responses – Q&A Closed & Published	April 30, 2021
Deadline for Vendor Proposal Submission	May 21, 2021
Finalist Presentations (Virtual)	June 21 – June 30, 2021
Estimated Board Approval	August 25, 2021
Contract Negotiation and Execution	Month of September 2021
Award Notification	By September 30, 2021
Implementation	To be completed by December 01, 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 nine (9) months after the deadline for Vendor proposal submissions, or for such additional period as the State and any Vendor may agree upon. Rates and fees quoted in a proposal shall remain fixed and binding on the Vendor.

C. Contract Term

The original term of the contract between successful Vendor and the State shall be five years beginning December 1, 2021, with OST having three one-year extension options, each exercisable in OST’s sole discretion, subject only to necessary Board approval.

D. Designated Contact

This RFP process will be managed by the Assistant Debt and Cash Manager (the “Designated Contact”):

Name: Stephen W. McVay
Title: Assistant Debt and Cash Manager
Address: 820 Silver Lake Boulevard, Suite 100
City/State: Dover, DE
ZIP: 19904
Email: Treasury_RFP@delaware.gov
Phone: (302) 672-6711

E. Submission of Written Questions

All written 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 April 23, 2021.

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 section number to which it relates.

The State will provide written responses to questions from prospective Vendors by April 30, 2021. Responses will be posted publicly and will be available at <http://bids.delaware.gov>.

II. Background

A. The Cash Management Policy Board

The Board was created to establish policies for and oversee the investment and deposit of money belonging to the State (“State Funds”).¹ *See 29 Del. C. § 2716(a)*. The Board has authority to determine the terms, conditions and other matters relating to the investment of State Funds, including the designation of permissible investments, the allocation between short- and long-term investments, the selection of investment managers and the allocation of funds among the selected managers. *See id.* The Board also has authority to retain consultants concerning the investment and deposit of State Funds. *See 29 Del. C. § 2716(d)(3)*.

The Board is comprised of nine (9) members, including five (5) Delaware citizens appointed by the Governor. The remaining four (4) members are State government officials (the State Treasurer, the Secretary of Finance, the Secretary of State and the Controller General) who serve *ex officio*.

The Board has two standing subcommittees - an Investment Subcommittee and a Banking Subcommittee. The Investment Subcommittee has standing authority to address and make recommendations to the full Board with respect to investment-related matters, including the selection of the State’s investment custodian for State Funds.

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

Minutes for Board and subcommittee meetings can be accessed at <https://treasurer.delaware.gov/public-meetings/>.

B. The Investment Guidelines

The Board has promulgated official guidelines governing the investment and deposit of State Funds (the “Guidelines”). *See 1 Del. Admin. C. § 1201*. A copy of the Guidelines is attached hereto as **Appendix B**.

Pursuant to the Guidelines, State Funds are required to be allocated to and held primarily in the following types of accounts: (a) demand deposit accounts for collection and disbursement and related sweep products holding immediately available funds needed to support the State’s daily governmental programs and activities; (b) liquidity accounts for short-dated, highly liquid U.S. treasury obligations and other permissible investments, proceeds from which may be used to meet the State’s anticipated seasonal funding needs; (c) reserve accounts for longer-dated U.S. treasury obligations and other permissible investments, proceeds of which may be used to meet the State’s unanticipated funding needs; and (d) endowment accounts holding domestic and international equities and other permissible

¹ The term “State Funds,” as used herein, does not include certain funds that outside of the Board’s purview and which are overseen by other State fiduciary bodies, including the State’s various pension funds, the State’s transportation trust fund, and the State’s retirement, college and “ABLE” investment programs.

investments for State Funds that have been set aside for specified legislative purposes with the intent of growing the corpus over time.

OST is tasked with ensuring that investments are made in accordance with the Guidelines and other Board directives.

The Board, by resolution, has addressed: (a) the amounts or percentages of State Funds that must remain in demand deposit and liquidity and reserve accounts (the “Cash Accounts”); (b) the number of liquidity and reserve accounts that will be maintained to manage State Funds; (c) the number of managers that are required or authorized to provide investment services for the liquidity and reserve accounts; and (d) the benchmarks or benchmark proxies that will be used by OST and the Board to assess the performance of the liquidity and reserve managers.

The Board separately has approved the number of endowment managers and the benchmark for the endowment accounts. The current structure provides for two endowment managers subject to a single custom benchmark.

C. The Investment Architecture for Cash Accounts

Pursuant to Resolution No. 2020-1, the Board adopted a revised investment architecture for the Cash Accounts (the “Investment Architecture”) to provide OST and approved liquidity and reserve managers with a flexible framework to maintain the safety and availability of State Funds to meet the State’s immediate and intermediate funding needs while maximizing the returns on State Funds. A copy of Resolution No. 2020-1 and Exhibit A (Investment Architecture) is attached hereto as **Appendix C**.

The Investment Architecture provides for two liquidity accounts, each with its own liquidity manager. There is no benchmark or benchmark proxy for the liquidity accounts. OST may in its discretion draw on State Funds in one liquidity account or both liquidity accounts to meet anticipated funding needs within a given fiscal year. Discretionary draws normally are made on a pro rata basis. The Investment Architecture contemplates that one or both of the liquidity accounts may be completely liquidated during certain periods of the fiscal year. OST has discretion to replenish the liquidity accounts as revenues are received throughout the fiscal year. Refunding of the liquidity accounts normally is made on a pro rata basis.

The Investment Architecture provides for three “Tiers” of reserve accounts and contemplates the use of four different reserve managers. Each Tier has a unique investment duration target and corresponding benchmark proxy. Tier 1 has one manager and a duration target of one to three years. Tier 2 has one manager and a duration target of one to five years. There are two Tier 3 reserve accounts, each with its own manager. Tier 3 reserve accounts have duration targets of five to ten years.

In the event the State has unanticipated funding needs, draws from the reserve accounts normally will be made on a pro rata basis. Refunding of the reserve accounts normally are made on a pro rata basis. OST may, with the consent of the Chair of the Investment Subcommittee, deviate from the pro rata draw and refunding requirements.

OST monitors the allocation between liquidity and reserve accounts on a monthly basis and transfers excess funds from liquidity accounts to reserve accounts to maintain allocations required by the Board.

D. The State Treasurer and Office of the State Treasurer

The State Treasurer has legal custody of all State Funds. *See 29 Del. C. § 2705(a)*. In addition to ensuring compliance with the Guidelines and other Board directives, OST serves as the administrative arm of the Board and coordinates all meetings of the Board and its subcommittees. OST also manages the State’s relationships with all Board-approved vendors.

E. The State’s Investments

As of December 31, 2020, the State’s overall portfolio of investments contained \$3,747 million in assets, consisting of: (a) \$952 million of permissible investments held in the liquidity accounts, (b) \$2,159 million of permissible investments held in the reserve accounts, (c) \$83 million of permissible investments held in the endowment accounts, and (d) \$553 million of State and New Castle County Coronavirus Relief Fund (“CRF”) proceeds held in temporary, short-term liquidity accounts. OST expects the CRF monies to be expended or returned to the federal government by December 31, 2021.

The 2020 year-end balance of each account and the identity of the corresponding bank or investment managers are set forth in the table below.

Account Type	Manager	Duration Mandate	Balance (12/31/2020)
Liquidity	PFM Asset Management	Under 1 Year	\$ 477,225,069
Liquidity	Wilmington Trust	Under 1 Year	\$ 475,200,548
Liquidity Account Total			\$ 952,425,617
Reserve	JP Morgan (Tier 1)	1-3 Year	\$ 513,843,625 ²
Reserve	BlackRock (Tier 2)	1-5 Year	\$ 524,019,264 ³
Reserve	Chandler Asset Management (Tier 3)	5-10 Year	\$ 565,516,860
Reserve	Lazard Asset Management (Tier 3)	5-10 Year	\$ 555,885,342
Reserve Account Total			\$ 2,159,265,091
Endowment	SEI Funds	N/A	\$ 42,688,133
Endowment	Vanguard Funds	N/A	\$ 39,816,233
Endowment Accounts Total			\$ 82,504,440
CRF	PFM Asset Management	Under 1 Year	\$208,396,002
CRF	PFM Asset Management	Under 1 Year	\$ 68,000,000
CRF	Wilmington Trust	Under 1 Year	\$ 208,396,002
CRF	Wilmington Trust	Under 1 Year	\$ 68,001,715
CRF Accounts Total			\$ 552,796,488
Total Invested Funds			\$ 3,746,991,488

²\$252.4 million of the JP Morgan Tier 1 balance is set aside as the Budget Reserve Account under the Delaware Constitution and may not be drawn upon by OST without a 3/5 vote by the General Assembly.

³The Tier 2 reserve account includes the “Budget Stabilization Fund” provided for in Section 74 of Senate Bill 240, the fiscal year 2021 Budget Bill. Draws from the Budget Stabilization Fund must be authorized by an act of the General Assembly.

All custodian services for the State's investment portfolios are currently provided by Northern Trust Company.

A detailed report for the State's liquidity, reserve and endowment portfolios for the quarter ending December 31, 2020 and pertinent performance history is available at following website: <https://treasurer.delaware.gov/debt-cash-management/>.

III. Scope of Services

By this RFP, the Board seeks to obtain an investment custodian to perform the services set out in this RFP and **Appendix A**, subject to the terms of any awarded contract, and carry out Board objectives as requested by OST and/or the Board. The selected Vendor will be the State's "book of record" for all assets and transactions for funds within the Board's purview. Specifically, the Board seeks the services of an investment custodian to perform at least the following services in a fiduciary capacity:

- Safekeeping of State assets held by the State's investment managers
- Settlement and trade processing
- Accounting and reporting
- Requisite unit or dollar accounting for proper allocation of income
- Performance measurement and analytics
- Guideline compliance monitoring
- Risk and internal control procedures
- Accurate and timely pricing
- Internet access
- Client servicing

Of particular concern to the State are cost-effective solutions that embrace technology and expert systems, and a disciplined approach in the delivery of custody services. Lastly, the State would like to have a knowledgeable, seasoned, and responsive client servicing team assigned to this engagement.

The State may elect to purchase additional services that may enhance the administration of State Funds. The purpose of this RFP is to notify qualified custody institutions of this intention, to formally request proposals, and to disseminate information that would assist custody providers in the preparing and submitting proposals to provide these services to the State.

Anticipated requirements for the services requested pursuant to this RFP are set out in Appendix A. The final Scope of Services will be subject to negotiation and OST and Board approval.

IV. Minimum Requirements to Submit a Proposal

Vendor submissions will not be considered unless the Vendor (a) clearly demonstrates in the proposal how the Vendor meets the vendor eligibility requirements set forth on page 1 of this RFP, (b) timely submits a proposal in accordance with the deadlines set forth in this RFP, and (c) substantially complies with the submission requirements and other material terms and conditions of this RFP. Proposals that do not meet the foregoing requirements may be considered non-responsive and rejected.

V. RFP Issuance and Submission of Proposals

A. RFP Issuance

1. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* § 6981, as modified by the annual budget bill.

2. Obtaining Copies of the RFP

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

- a) <http://www.bids.delaware.gov/>
- b) <https://treasurer-delaware.bonfirehub.com/opportunities/40047>
- c) <http://treasurer.delaware.gov/requests-proposals/>
- d) <http://nast.org>

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. Contact with Professionals

OST may retain consulting services or legal counsel to assist in the review and evaluation of this RFP and Vendor responses. Vendors shall not contact OST's consultants 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 consultants 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 proposals from Vendors who, or whose officers or staff:

- a) Have 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) Have 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) Have been convicted or has had a civil judgment entered for a violation of any state or federal antitrust statute;
- d) Have failed:
 - i. Without good cause to perform under an investment custody services contract; or

- ii. To perform satisfactorily in accordance with terms of any an investment custody services contract;
- e) Have violated ethical standards set out in law or regulation; and
- f) Any other cause determined by OST or the Board to be serious and compelling, and which undermines confidence in a Vendor's ability to perform under any resulting investment custody services contract.

9. No Press Releases or Public Disclosure

OST 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 any resulting contract or services shall require the prior express written permission of OST.

10. RFP Not an Offer

This RFP does not constitute an offer by OST, the Board or 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. OST 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 enough 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** (exceptions) any areas where it will be unable to provide services as requested or required herein. *See* Section V.B.17, below. 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 in its

proposal. Acceptance or rejection of any or all exceptions or proposed adjustments 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

All proposals must be **received no later than 4:00 p.m., prevailing Eastern time, on May 21, 2021** (the "Proposal Deadline"). Responses received after the Proposal Deadline 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 for technical questions or issues related to your submission.

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

Timely proposals will be opened by OST 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 with 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

OST 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. OST 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

Except as noted below, all documents submitted as part of a Vendor's proposal will be treated as confidential during the evaluation process and will not be available for review by anyone other than OST, the Board, the Evaluation Team and counsel. There shall be no disclosure of

any Vendor's information to a competing Vendor prior to award of the contract unless such disclosure is required by law or a court order.

The State is required to comply with the State of Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). Under FOIA, 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, it becomes subject to FOIA's public disclosure obligations, subject to any applicable exemptions.

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 Vendor's 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, electronic file labeled "Confidential Business Information" and include the specific RFP number. **The file must contain a letter from the submitting Vendor's 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 electronic file, the State will 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 designation as set forth in this section. Any Vendor 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 OST'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 Professional Service Agreement (the "PSA") governing the relationship between the Vendor and the State.

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, the Vendor should seek clarification from OST 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 to be received by the Designated Contact by 4:00 p.m., prevailing Eastern time, on April 23, 2021. Questions must be submitted electronically to the following email address: **Treasury RFP@delaware.gov**.

All questions will be consolidated and answered in a single response that will be posted on the State's websites at <http://www.bids.delaware.gov> by 4:00 p.m., prevailing Eastern time, on April 30, 2021, or such other date and time as may be prescribed by OST. Vendor 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 (being questioned)

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

12. State's Right to Reject Proposals

OST and the Board reserve 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 OST and the Board may deem 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 Board makes a determination that such action is necessary or appropriate or in the best interest of the State.

15. Notification of Withdrawal of Proposal

A Vendor 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 if 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 PSA

Attached hereto as **Appendix D** is OST's standard form of 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 is not bound by any provision of the form PSA and 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 Board approval. The Board has the sole right to select the successful Vendor and approve the issuance of any Award and the terms of any PSA. The Board 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 Board.

An Award, if any, will be communicated to the successful Vendor and published only after (a) the Board authorizes the issuance of an Award, and (b) OST and each such Vendor execute a formal PSA on terms acceptable to OST and the Board. No Vendor 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.

VI. Proposal Requirements and Evaluation

A. Required Information

1. Index of Tabs

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.

Tab A: Transmittal Letter. The letter must contain:

- Certification that the Vendor satisfies the minimum qualifications set forth in Section IV.

- A summary of the Vendor’s investment custody services experience and interest in providing these services to the State;
- A statement indicating whether the proposal contains confidential business information that is being submitted in a separate, sealed envelope in accordance with the procedure above; and
- A representation that no investment custody services related to this RFP will take place outside of the United States.

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.

Tab C: Pricing Proposal. Please provide a fee proposal for custody services. OST prefers an “all-in,” flat-fee structure for services outlined in Appendix A, which may be quoted as an annual dollar amount or a graduated annual fee based on assets under management. If Vendor has additional fees for services not included in the all-in, flat-fee proposal, please provide a schedule of all such fees.

Tab D: Confidential Information Form. Vendors should identify any documents or information that it considers confidential using the form set forth on **Attachment 2**.

Tab E: 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.

Tab F: PSA Redline. Include the Redline or similar comparative version of the PSA, a copy of which is affixed hereto as **Appendix D**, reflecting all proposed changes to the PSA, which changes may be accepted or rejected in OST’s discretion. Successful Vendors who do not propose changes are deemed to have consented and irrevocably agreed to the PSA.

Tab G: Financial Statements. Provide copies of your most recent Form 10-K, Form 10-Q and SOC-1.

Tab H: Business References. Provide at least three business references using the form provided in **Attachment 4**.

Tab I: Monthly Audited Account Statements. For both separately managed fixed income accounts and endowment accounts for similar public clients. Also, include sample performance reports for fixed income and endowment portfolios.

Tab J: Business Continuity and Disaster Recovery Plans. Vendors responding to this RFP must attach executive summaries of their business continuity and disaster recovery plans.

Tab K: Retention Policies. Vendors responding to this RFP must attach summaries of their document retention policies.

Tab L: Conversion Manual. Vendors responding to this RFP must attach a summary and documentation of their client conversion processes and timelines.

2. Furnishment of Proof

Prior to Award, the successful Vendor shall furnish OST 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.

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 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 Vendor proposals meeting all RFP requirements based on the quantitative and qualitative criteria set forth below. Neither the lowest priced, nor the 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 make assumptions about Vendor capabilities.

The State has outlined the services it will require in Section III and Appendix A. 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.

Evaluation Criteria	Point Value
<p><u>Custody and Accounting (10 Points Each)</u></p> <p>(1) Breadth and depth of ability to safekeep assets held by investment managers</p> <p>(2) Breadth and depth of ability to settle and process trades</p> <p>(3) Breadth and depth of ability to provide audited accounting statements and reporting on a monthly, annual and ad hoc basis</p> <p>(4) Breadth and depth of ability to provide audited and customized reporting to meet client accounting and reporting requirements in a timely manner</p> <p>(5) Breadth and depth of ability to provide unit or dollar trust/plan accounting for proper allocation of income</p>	50
<p><u>Performance Measurement, Analytics and Compliance Monitoring (5 Points Each)</u></p> <p>(1) Breadth and depth of performance and risk measurement reporting (both standard and customized)</p> <p>(2) Quality and ease of use of Vendor’s online client interface for reporting and funds transfers</p> <p>(3) Ability to provide monthly reports in a timely manner to meet client reporting requirements deadlines</p> <p>(4) Breadth and depth of ability to provide Guideline compliance monitoring and reporting</p>	20
<p><u>Organization & Experience (5 or 10 Points Each)</u></p> <p>(1) Overall organizational fit (including Vendor history, values & personnel) (5 Points)</p> <p>(2) Experience with public fund clients (5 Points)</p> <p>(3) References (10 Points)</p>	20
<p><u>Pricing</u></p>	10
TOTAL POINTS	100

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 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 former or current client's ability to convey information relevant to the evaluation process, and (b) consented to all such communications with references or former or current clients.

6. Oral Presentations

The Evaluation Team, with or without prior consultation with OST or the Board, may in its discretion invite one or more Vendors to make in-person or virtual presentations to the Evaluation Team. Presentations are tentatively scheduled for the week of June 21, 2021. **Any costs associated with presentations will be borne by the Vendor.** The State requests that all individuals who are expected to be assigned to this engagement be in attendance.

VII. Contract Process

A. Formal Contract

Vendors that are selected as finalists and invited via written notification from OST (the "Invitations") to enter into negotiations concerning investment custody services will be expected to enter into formal contracts with OST in the form of the PSA attached here to as **Appendix D** (the "Contract"). A Vendor's attempt to negotiate pricing or other material Contract terms that were not disclosed through the exception process and detailed in the Vendor's response may result in the termination of negotiations with, and/or the disqualification of, such Vendor.

B. Modification of PSA

In its discretion, OST may consider and accept proposed modifications or additions to the PSA, whether or not raised in an exception, subject to necessary Board approval.

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 OST, in its discretion. If no Contract has been executed by the applicable deadline, OST 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 investment custody services when due under the Contract, OST, 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, OST determines that any of the foregoing representations was untrue when made or subsequently became untrue, OST 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 OST or the Board 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, OST, 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, Vendor shall not, directly or indirectly, solicit any employee of the State to accept employment with the Vendor, its affiliates, or any person acting in concert with Vendor, without prior written approval of OST.

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.

Attachments

Attachment 1: Vendor Questionnaire

Attachment 2: Confidential Information Form

Attachment 3: Exception Form

Attachment 4: Business References

Appendices

Appendix A: Scope of Services

Appendix B: Investment Guidelines

Appendix C: Board Resolution 2020-1

Appendix D: Form of Professional Services Agreement

ATTACHMENTS

ATTACHMENT 1: Vendor Questionnaire

CONTRACT NUMBER: TRE21103 - INVESTCUST

Firm Overview

1. Provide an executive summary of your organization’s institutional master trust & custody business unit. Include all relevant statistical information including, at a minimum the first year of providing custodial services, assets under custody.
2. Describe and/or provide your firm’s core values, governing principles, and mission statement. How do these traits and/or goals relate to your firm’s provision of the requested services? Why do they make your firm a “good fit” for this engagement?
3. Describe what differentiates your organization from other custodian banks. What is the value your organization provides to clients?
4. Describe specific strengths and services/products your organization has for meeting the needs of government clients.
5. Include an organization chart of the trust/custody business unit, as well as an organization chart showing the position of the unit within the firm’s overall management structure. Describe the firm’s overall management structure, and how the trust/custody business unit fits within it.
6. List the office location(s) (primary and secondary) from which the work is to be delivered.
7. Are there any current organizational issues (*i.e.*, mergers, acquisitions, personnel changes, business concerns, etc.) about your institution that we should know about? How about the last three years?
8. Complete the following matrix for total trust/custody assets and clients by type and asset size. Answer the question as asked and do not change the table.

	# of Clients	Assets under Custody	Median Client Size	Largest Client Size
Total Public Fund Clients	0	0		
Under \$50 Million				
\$50-\$250 Million				
\$250-\$500 Million				
\$500-\$1,000 Million				
\$1-\$5 Billion				
Over \$5 Billion				
Total Endowment/Foundation Clients	0	0		
Under \$50 Million				
\$50-\$250 Million				
\$250-\$500 Million				
\$500-\$1,000 Million				

\$1-\$5 Billion				
Over \$5 Billion				
Total Clients	0	0		
Under \$50 Million				
\$50-\$250 Million				
\$250-\$500 Million				
\$500-\$1,000 Million				
\$1-\$5 Billion				
Over \$5 Billion				

9. How many new trust/custody clients and assets have been added/lost in each of the past 5 years? Complete the matrix below. Also, for clients lost, provide reasons for the termination of the relationship.

Calendar Year	Added		Lost		
	Year	Number	Dollar Amt	Number	Dollar Amt
2016					
2017					
2018					
2019					
2020					

10. Complete the following matrix for your organization’s trust/custody business unit.

11. Describe how your trust/custody operations have been changed or impact by COVID-19 pandemic.

	# of People
Client Service	
Operations/Accounting	
IT/Systems Support	
Administrative Support	
Securities Lending	
Other	
Total	

Client Servicing

1. What is your approach to client servicing? What would be the most distinct element of your client servicing approach that the State would benefit from and consider exceptional relative to the custody industry?

2. How do you propose to staff for the State both from client servicing and actual daily service deliverables? Will your organization assign a day-to-day administrator to act as the point of contact for the OST?
3. What is the turnover over the last three years of the client servicing staff to be assigned to the State? This should include back office accounting and reporting personnel.
4. Please provide the names and bios of the client servicing team members as follows and as specified in the table below:
 - Client Servicing (including Conversion Team)
 - Accounting and Reporting
 - Performance Reporting

Name	Responsibility	Location	Number of Client Relationships	Years with Bank	Years Experience and Credentials

5. Does the team handle other public or corporate fund clients with the same configuration as that of the State? Please enumerate other clients handled by the team.
6. Please discuss opportunities which your financial institution offers to clients for training and continuing education, and whether those educational opportunities would be available to the State.
7. Describe the training and education to the State including during conversion?

Financial/Operation Risk

1. Please enumerate substantive issues raised by independent auditors in your SOC-1 and issues published in your Form 10-Ks and 10-Qs. Provide copies of the most recent Form 10-K, Form 10-Q and SOC-1 (Tab G).
2. Provide your organization’s current short-term and long-term credit rating.
3. Does your organization subcontract any of the services required by the State? Identify by vendor name each such subcontractor and the specific services they will be providing.
4. Please describe your business continuity and disaster recovery plans. How often is the plan tested? When was the most recent test done? Indicate the date and results of the last testing of such emergency plan(s) and immediately report to the State the results of any subsequent test. Provide an executive summary of these plans (Tab J).
5. What will be the recovery time(s) and service level for critical custodial services in the case of a major disaster?

6. Does an outside auditor or consultant review your business continuity and disaster recovery plans? If so, what was the date of the last review? Describe the process which senior management follows in reviewing and implementing recommendations.

Systems, R&D and Technology

1. What are your technology, R&D and systems budgets (in actual U.S. dollars) specific to trust and custody services over the next three years? What has been spent in the last three years?
2. Provide a brief description of the client interface for reporting and funds transfers.
3. Is the above information delivery system subcontracted or in-house? If subcontracted, please specify the vendor name and release number, including the description of the relationship and how access to the source code is defined.
4. What data is available in your organization's on-line delivery system (*i.e.*, assets, transactions, corporate actions, pending trades, receivables, accruals, compliance checking, cash positions and management and forecasting, performance, analytics, etc.)? Is training provided during the initial stages of conversion and ongoing?
5. What technical support and client service resources will be dedicated to the State account for the purposes of installing, upgrading, supporting, troubleshooting, and maintaining your on-line client information delivery products?
6. Is information access available "real time on-line" or nightly batch download for the on-line systems? Please be specific.
7. What is your vision over the next five years in terms of your technology and processing capabilities that will ensure your competitiveness and existence?

Trade Processing, Settlement and Custody

1. Are you able to meet the following functions?
 - Accept daily instructions from the investment managers.
 - Advise investment managers of daily changes in cash equivalent balances.
 - Immediately advise investment managers of additions or withdrawals from account.
 - Resolve any problems that investment managers may have relating to custodial account.
 - Safekeeping of securities.
 - Interest and dividend collection.
 - Process all investment manager transactions.
 - Collect proceeds from maturing securities.
 - Disburse all income or principal cash balances as directed.
 - Provide monthly statements by investment manager account and consolidated statement of all assets on a total pool level and/or plan and participant unit levels.

2. What is distinct about your custodial capabilities that we should know about relative to the State of Delaware public funds?
3. Briefly describe the method and frequency of reconciling the custodian’s positions with its depositories and sub-custodians.
4. Briefly describe the procedures used to ensure that physical securities are properly registered, transferred and in general, held, delivered and/or received in good deliverable form. Include any second party banks in the clearing of such securities.
5. State the value of assets held as of December 31, 2020 at Depository Trust Company and the Federal Reserve and the length of the direct participant relationship with the custodians.
6. What were the trade volume (number and market value size) that you processed for the year ending December 31, 2020 and failed trades for U.S. securities?

Trades	Volume (Number)	Total Market Value in US\$ millions	Fail Rate (%)
Purchases			
Sales			

Income Collection

1. Describe the custodian’s standard policies on cash crediting and debiting, including cut-off deadlines for all securities, including an emphasis on domestic short term, intermediate and long-term fixed income securities.
2. Describe your procedures for ensuring that interest or income is paid.
3. Will payments be credited in same day funds or clearinghouse funds for domestic securities?
4. When and in what instances do you rescind contractual income collections? What is/are your policy(s) for domestic fixed income securities, including short-term instruments?
5. Does your organization have an auto credit program? If yes, describe the reason behind such a program? If no, why? Is there a fee associated with this service?
6. Do you track late collections of income? Can you produce a tracking report detailing outstanding claims? Do you notify clients of failures to collect or late collections of income?

Accounting and Reporting

Note: OST uses monthly audited statements for each individual account as source documentation to record income on a cash basis and reconcile account balances of an original purchase cost basis. Current statements include (but are not limited to) the following information:

- Statement of Changes in Net Assets

- Transaction Report
- Interest and Dividends Receivable
- Interest and Dividends Earned
- Portfolio Summary (including current return)
- Portfolio Detail
- Original Cost

At a minimum, OST needs the following information to be included in the monthly audited statements:

- Ending Accrued Interest Receivable
- Ending Tax Cost (Original Amount)
- Ending Book (Amortized) Value
- Ending Market Value
- Monthly Contributions by date
- Monthly Withdrawals by date
- Monthly Fees Paid by date
- Realized Gains (Losses) on Adjusted Book Value

Please provide an example of your firm's monthly audited account statements for similar public clients (Tab I).

1. The State considers the custodian as the "book of record" for assets and transactions. Do you accept this responsibility? Please describe.
2. What is your investment manager reconciliation policy and procedure before audited statements are sent to clients? Is this proactive, reactive, or is the onus with the investment manager to reconcile to your information?
3. Do you have built-in interfaces with the current investment managers (separate and commingled) of the State? Please specify for each manager.
4. Describe your organization's trust and plan (unit or dollar) accounting capability (include system name and year developed).
5. Is the system maintained in-house or subcontracted or service bureau arrangement with a third-party?
6. If subcontracted, please specify the vendor name and release number, including the description of the relationship and how access to the source code is defined.
7. What are the different cost methodologies that you are able to deploy specific to fixed income securities?
8. Do you have the ability to do straight line, scientific amortization and other relevant accounting capabilities for cash pools?

9. What are the future or planned enhancements to your current accounting and reporting system? If planned changes or enhancements are envisioned, what are the advantages to clients?
10. Enumerate all data vendors utilized by your institution for pricing, fixed-income, derivatives (i.e., swaps, futures, etc.) and mortgage factors, etc. Specify primary, secondary and tertiary sources.

Pricing Sources	For what type of Securities, Instruments or Asset Class	Specify if Primary or Secondary	Daily Feeds (Yes or No)

11. What types of reports are available to clients? List both standard and non-standard reports.
12. Does your organization provide training in the interpretation and generation of accounting reports during the initial stages of conversion and on-going?
13. How many business days following the end of a reporting period are fully audited reports delivered via electronic delivery (i.e., on-line, PC download, CD, multimedia, etc.)?

Report Type <i>Sample Only</i>	# of Business Days Audited (On-line)	# of Business Days Unaudited (On-line)
Asset Statement		
Transactions		
Pending Trades		
Income		
Other		

14. Can the State be assured that audited statements will be available on the 5th business day after month end? Please explain.
15. Describe the basis for monthly audited reports. Are the asset holdings and transactions based on settlement date accounting, settlement date accounting with pending trade adjustments, or trade date accounting?
16. What type of public fiscal year end reports can your firm provide for the State’s financial statements? Are these reports customizable?

Cash Management (Short Term Investment Management)

1. What investment vehicles are available for short-term investments (i.e., STIF, Active Cash, Extended Maturity, etc.) applicable to the State? Please identify and describe investment policies and guidelines, including each of the following for each fund or investment vehicle. Provide the

current fact sheet for any funds described below. Please note that any investment will need to maintain a \$1.00 NAV.

- a. Investment Philosophy/Investment Advisor
 - b. Objectives and Guideline
 - c. OCC Reg 9 or SEC Rule 2a-7
 - d. Exposure Limits
 - e. Credit Quality
 - f. Duration
 - g. Maturity
 - h. Derivatives Policy
 - i. Floating Rate Note Policy
 - j. Quarterly Investment Performance Net of Fees (last five years)
 - k. Total Expense Ratio for Services
2. For each, what is the total asset management fee (expense ratio) that you are able to provide on a relationship pricing basis?
 3. For each of the short-term investment funds or vehicles available, what are the current market values as of March 31, 2021? For each of the funds, what is the market value holding percentage controlled by the three biggest participants in the funds?
 4. What is your daily overdraft policy? What is your schedule of charges for overdraft positions?
 5. What is the cut-off time for cash contributions received during the day and invested same day? What is the latest cut-off and what sweep vehicle, or fund would that be?
 6. Do you have the capability to provide a cash availability projection report? How many days is the cash projection (*i.e.*, 5 days, 10 days, 30 days, 60 days, 90 days, 180 days)? What is the maximum number of days cash can be projected?

Performance Measurement/Analytics

Note: OST currently receives the following performance reports from our current custodian:

- Market Value Return (both gross and net of manager fees)
- Book Value Return (both gross and net of manager fees) – book value being amortized return (*i.e.*, market return +/- any unrealized market value gain/loss)
- A “Custom” Report – contains month-end tax cost of portfolio accounts, Cash Income (both gross and net of manager fees), average monthly market value balances, annualized current month market and book value net returns and average maturities

OST expects the selected Vendor to continue to provide these reports.

1. Do you have a dedicated performance and analytics group? Please describe.
2. Can your organization provide monthly, quarterly, calendar and fiscal year-to-date, annual, one (1) year, three (3) year, five (5) year, ten (10) year, and since inception performance?

3. Can performance, gross and net of fees, be calculated for each period?
4. Can you backload historical returns?
5. Describe the process to assure GIPS compliance.
6. What are the types of analytics and performance measurement currently available to clients specific to fixed income – short term, intermediate and long term? If you use an external provider, include a description of how the provider’s system will be integrated with your records and the controls you will institute to ensure and validate the completeness, accuracy and integrity of the data and information generated by the system.
7. Are all of the performance measurement and analytic services described in the question above available on-line? If not, enumerate and specify the planned date of introduction for each.
8. Are there different levels of performance measurement and analytics services? If there are different service levels, describe whether they reside in one performance measurement module/system or multiple modules/systems.
9. What are your key strengths in the area of performance measurement and analytics specific to fixed-income securities? What is different about your performance measurement and analytics capabilities in the area of fixed income that we should know about?
10. What are relative weaknesses or capabilities that needs enhancement in your performance?
11. With reference to on-line delivery, does the State need to subscribe to third party vendors and separate on-line systems?
12. What benchmarks and universes are available? Are they available on-line? How far back do you carry historical returns? Can you produce and report custom benchmarks?
13. Provide sample reports of performance measurement and analytics services for both fixed income and endowment portfolios (Tab I).
14. Can the State be assured that performance reports will be available on the 5th business day after month end? Please explain.

Investment Guideline Compliance and Risk Management

1. Is there a separate risk and control system, as well as a dedicated group, for transaction risk management? When did you introduce the system?
2. What makes the system valuable to the client?
3. Does the system integrate guideline compliance into the automated trading process and actively monitor transactions and portfolio composition?

4. What are the different levels of compliance monitoring (*i.e.*, basic, intermediate or advanced) that you provide? Are there different costs or fees for each level for your compliance monitoring services?
5. Is this compliance monitoring performed for all asset classes? Is it performed daily? Is it on a post-trade, pre-settlement basis? Is it available on-line?
6. What is distinct about your compliance monitoring service specific to fixed-income securities?
7. How are clients and investment managers notified of a violation or breach of investment policy or guidelines?
8. Are derivatives monitoring, risk control and compliance check services provided to any clients? Furnish three (3) client references currently using this service.

Conversion

1. Describe your approach to the implementation and conversion process. Include an estimated conversion calendar, and the timeframe to complete each task.
2. Do you have a conversion manual? If so, provide summary and documentation of client conversion process including timeline with deliverables (Tab M).
3. What dedicated resources (personnel, equipment, training of personnel, consultants, etc.), procedures and controls will you provide or recommend in the conversion period to ensure that the conversion is completed successfully in both a timely and accurate manner?
4. How much time does a transition usually take?
5. What is the relationship between the transition team and the permanent account administration staff?
6. How do you handle transactions and claims that are in process during the transition/conversion period?
7. How do you handle the performance measurement files during the transition/conversion period?
8. Are you able and willing to backload historical data? Is there an additional fee?
9. Give a detailed description of any specific problems that occurred during transitions over the past year and solutions that were instituted.
10. Provide a summary of the problems that you reasonably expect to occur during a custody service conversion and your approach to resolving these anticipated problems.
11. What validations procedures do you perform to ensure completeness in the conversion process?

ATTACHMENT 3: Exception Form

CONTRACT NUMBER: TRE21103 - INVESTCUST

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.

Paragraph # and page #	Exceptions to specifications, terms or conditions	Proposed Alternative

Note: Use additional pages as necessary.

ATTACHMENT 4: Business References

CONTRACT NUMBER: TRE21103 - INVESTCUST

List a minimum of four business references. At least three (3) of the references should be from government entities that most resemble the relationship you envision with the State. 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 entity, officer or employee of this State as a business reference.

If you have held a contract with the State 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.

APPENDICES

APPENDIX A: Scope of Services

CONTRACT NUMBER: TRE21103 - INVESTCUST

1. **Custody Services** - Vendor will provide “best in class” custody services and meet all industry standards as follows:
 - a. Safekeeping of current assets held by investment managers and the ability to accommodate the entire universe of financial assets
 - b. Timely settlement and trade processing including the reconciliation of all transactions with investment managers
 - c. Active communication with investment managers regarding cash availability
 - d. Timely receipt and posting of interest/dividend income
 - e. Dedicated transition services to receive new assets or reallocate assets between investment managers
 - f. Secure procedure allowing authorized OST staff to facilitate the movement of cash to/from investment managers to meet liquidity needs
 - g. Periodic updating of custody services industry issues/regulation and assessment of client impact

2. **Accounting Services** – Vendor will provide accounting services that are GAAP and GASB compliant as follows:
 - a. Timely Monthly Audited Accounting Statements and Reporting
 - b. Unit or Dollar Trust/Plan Accounting for proper allocation of income earned to participants (applies to Land and Water Endowment accounts).
 - c. Ability to customized and generate fiscal year end reporting for public financial statements
 - d. Ability to provide reporting which is GASB compliant
 - e. Robust online reporting platform for both client and investment managers
 - f. Commitment to annual training for OST staff in the use of online reporting tools

3. **Performance Measurement, Analytics** – Vendor will possess an online platform capable of generating a wide variety of reports in various file formats (Excel, Adobe, etc.) that are GIPS compliant.
 - a. Provide performance and risk measurement reporting (both standard and customized)
 - b. Robust online platform available for client inquiry and reporting (daily, monthly and annual)
 - c. Customized and generate fiscal year end reporting for public financial statements
 - d. Dedicated resources for training client staff in the use of all online applications
 - e. Generate “executive summary” reporting for both CMPB needs and OST website for the public information

4. **Compliance Monitoring, Corporate Actions and Regulatory Information** - Vendor will possess an online platform capable of generating a wide variety of reports in various file formats notifying client of compliance with the Guidelines (Appendix B).
 - a. Provide month-end investment compliance monitoring depending on specific strategy (as specified in CMPB guidelines)
 - b. Provide client with corporate action notification based on security holdings
 - c. Monitor proposed custody industry legislation/changes and client notification of potential impact on their account(s)

5. **Client Communication** – Vendor will be proactive in communications with client regarding all matters impacting relationship.
 - a. Vendor to provide annual fee analysis and recommendation for cost saving opportunities
 - b. Vendor to periodically inform client of both new and/or existing services which may benefit client accounting and/or performance needs
 - c. Vendor to inform client of investment options used by other clients that may be consideration by the CMPB and OST

APPENDIX B: Cash Management Policy Board Guidelines

OFFICE OF THE STATE TREASURER CASH MANAGEMENT POLICY BOARD 1200 Cash Management Policy Board

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds

1.0 Statutory Authorization

- 1.1 **Role of the Cash Management Policy Board.** The Cash Management Policy Board ("Board") was created by 63 Del. Laws, ch. 142, to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, other than money deposited in any State Pension Fund or the State Deferred Compensation Program, ("State Funds") and (b) to determine the terms, conditions, and other matters relating to those investments including the designation of permissible investments.
- 1.2 **Role of the Office of the State Treasurer.** The investment of State Funds is to be made by the Office of the State Treasurer ("OST") in accordance with the objectives and guidelines outlined herein ("Guidelines"); provided, however, that the Board, by majority vote, may authorize OST to depart from the Guidelines.

21 DE Reg. 968 (06/01/18)

23 DE Reg. 584 (01/01/20)

2.0 Accounts

- 2.1 **Designation of Accounts.** For purposes of these Guidelines, State Funds are to be allocated and held in a variety of accounts as outlined below ("Accounts"):
 - 2.1.1 **Collection and Disbursement Accounts.** Cash required to meet the State's anticipated near-term operating requirements is to be held in "Collection and Disbursement Accounts." These accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 5.0 below by qualified financial institutions ("Cash Management Banks") selected by the Board through a competitive bid process.
 - 2.1.2 **Liquidity Accounts.** Cash not required for the State's near-term operating requirements but readily available for anticipated funding needs of the State will be held in "Liquidity Accounts." State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 6.0 below by qualified investment managers ("Liquidity Managers") selected by the Board through a competitive bid process.
 - 2.1.3 **Reserve Accounts.** Cash that is not anticipated to be needed for the State's near-term operating requirements or funding needs, but can be made available for unanticipated needs is to be held in "Reserve Accounts". State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 7.0 below by qualified investment managers ("Reserve Managers") selected by the Board through a competitive bid process.
 - 2.1.4 **Endowment Accounts.** "Endowment Accounts" consist of State Funds set-aside for specified legislative purposes with the intent of growing the corpus of such funds over time. State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 8.0 below by qualified investment managers selected by the Board through a competitive bid process ("Endowment Managers").
 - 2.1.5 **Operating Accounts.** "Operating Accounts" consist of State Funds set aside for specified purposes to be made available as and when required to meet such purposes. State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 9.0 below by Liquidity Managers or such other financial institutions as determined by the Board.

2.1.6 **Settlement Accounts.** “Settlement Accounts” consist of State Funds that have been deposited into a demand deposit account at a Merchant Bank following the processing of a debit or credit card transaction. Cleared amounts deposited to the Settlement Accounts, net of merchant processor and related fees, shall be transmitted via ACH to a Collection and Disbursement Account within two business days after deposit. Settlement Accounts shall be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 10.0 below. The term “**Merchant Bank**” means a qualified financial institution approved by the Board to maintain a Settlement Account.

2.2 **List of Accounts.** OST shall maintain on its website a current listing of all Accounts and the Cash Management Banks, Merchant Banks, Liquidity Managers, Reserve Managers, and Endowment Managers approved by the Board to manage State Funds in such Accounts.

23 DE Reg. 584 (01/01/20)

24 DE Reg. 716 (01/01/21)

3.0 Allocation of State Funds

3.1 **General Allocation.** The Board is responsible for setting the policy as to the allocation of State Funds among the Accounts (**29 Del.C. §2716(a)(2)**).

3.2 Allocation among Accounts

3.2.1 **Cash Accounts.** Unless otherwise determined by the Board, OST shall use its discretion to allocate State Funds among the Collection and Disbursement Accounts, Liquidity Accounts, and Reserve Accounts (collectively, “Cash Accounts”) in accordance with the general purposes of such Accounts as described in Section 2.0 of these Guidelines and the investment objectives more particularly described in Sections 5.0 – 7.0 below. In general, OST attempts to minimize the number of transfers of State Funds in and out of both Liquidity Accounts and Reserve Accounts. In the former case, OST maintains balances of funds with the Cash Management Banks sufficient to meet the State’s daily requirements over the near-term, allowing Liquidity Account balances to fluctuate based on the reasonably predictable cyclical pattern of the State’s annual collections and disbursements. In the latter instance, OST allocates State Funds to and from Reserve Accounts only as unforeseen need for, or receipt of, funds occurs that deviates meaningfully from the State’s historical pattern of collections and disbursements. Notwithstanding the foregoing, the Board may express a fixed allocation of State Funds to be held in each of the Cash Accounts to reflect then-prevailing market conditions or other considerations related to the probable income from and/or level of risk related to the investment of State Funds. (**29 Del.C. §2716(a)**). In such cases, OST may be required to make more frequent allocations among the Cash Accounts.

3.2.2 **Endowment Accounts and Operating Accounts.** Unless otherwise determined by the Board, OST shall allocate State Funds to the Endowment Accounts and Operating Accounts in accordance with the general purposes of such Accounts described in Section 2.0 of these Guidelines and the investment objectives more particularly described in Sections 8.0 and 9.0 below.

3.3 Allocation among Banks and Managers

3.3.1 **Cash Management Banks.** Unless otherwise determined by the Board, OST shall further allocate State Funds in the Collection and Disbursement Accounts among the Cash Management Banks in such proportions as OST determines in its discretion are necessary or desirable to meet the State’s anticipated near-term anticipated operating liquidity requirements.

3.3.2 **Liquidity Managers.** Unless otherwise determined by the Board and subject to the provisions of subsection 3.3.5 below, OST shall further allocate State Funds in the Liquidity Accounts pro rata among the Liquidity Managers based on the aggregate amount of State Funds in such Accounts.

3.3.3 **Reserve Managers.** Unless otherwise determined by the Board, OST shall further allocate State Funds in the Reserve Accounts pro rata among the Reserve Managers based on the aggregate amount of State Funds in such Accounts.

3.3.4 **Endowment Managers.** Unless otherwise determined by the Board, OST shall further allocate State Funds in the Endowment Accounts pro rata among the Endowment Managers based on the aggregate amount of State Funds in such Accounts.

- 3.3.5 **Special Allocation of State Funds in Operating Accounts.** Unless otherwise determined by the Board, OST shall further allocate State Funds in Operating Accounts pro rata among the Liquidity Managers or such other financial institutions as directed by the Board pursuant to subsection 2.1.5.

4.0 **General Investment Standards and Objectives**

- 4.1 **Standard of Care.** In general, the banks and managers engaged as fiduciaries to manage State Funds shall exercise the judgment and care over the investment of such funds with the care, skill, prudence, and diligence under the circumstances then prevailing that prudent professional investment managers, acting in like capacity and familiar with such matters, would use in the investment of State Funds.
- 4.2 **General Objectives.** Subject to the more specific policies set out in Sections 5.0, 6.0, 7.0, 8.0, and 9.0 of these Guidelines, State Funds shall be invested in a manner that ensures the safety of, provides liquidity for, and maximizes return on such funds. For purposes of these Guidelines, the foregoing priorities have the following meanings:
- 4.2.1 **Safety.** Safety is defined as the ability, under ordinary market conditions, to ensure against the loss of the original investment amount of State Funds. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the portfolio.
- 4.2.2 **Liquidity.** Liquidity is defined as the capacity to realize, convert to cash, an asset in a timely fashion, at or near its value. An asset is said to be liquid when the act of selling has little impact on the asset's price. State Funds shall remain sufficiently liquid to meet all anticipated operating requirements and funding needs, and should be managed and invested for availability to meet unanticipated needs with minimal losses associated with illiquidity.
- 4.2.3 **Return.** Return is defined as the gain or loss on an investment over a specified period. Gains on investments are considered to be any income received from the security plus the earnings an asset generates in excess of its initial cost. The State Funds portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints of safety and liquidity set out herein.

5.0 **Collection and Disbursement Accounts**

- 5.1 **Investment Objectives.** The funds in the Collection and Disbursement Accounts must be immediately available to support the State's daily governmental programs and activities. The primary investment objectives are therefore safety and liquidity of such funds; return is a secondary priority. OST may, consistent with these investment objectives, minimize credit risk associated with demand deposit account balances at Cash Management Banks through same-day money market mutual fund sweep products in accordance with subsection 5.2.2 and/or banking services arrangements offering "daylight overdraft" or similar privileges. End-of-day ledger balances shall be secured as provided in subsection 5.2.
- 5.2 **Permissible Investments.** Cash Management Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institution.
- 5.2.1 **Demand Deposit Accounts.** State Funds held by Cash Management Banks in demand deposit accounts shall be collateralized with one or more of following approved methods: (a) pledges of government securities that meet the definitions set out in subsections 6.3.1.1 and 6.3.2.1 to a custody account held for the benefit of the State at a Federal Reserve Bank, or held by an independent trust company, bank or similar financial institution rated in the highest rating category by at least one Nationally Recognized Statistical Rating Organizations approved by OST ("NRSRO"); (b) irrevocable standby letters of credit ("LOCs") issued by a Federal Home Loan Bank or financial institution rated in the highest rating category by at least one NRSRO; and (c) surety bonds issued by insurance companies rated in the highest rating category by at least one NRSRO (collectively, "Eligible Collateral"). The terms of any pledge or custody agreement, LOC, or surety bond shall be reviewed and approved by OST. The aggregate value of Eligible Collateral shall equal or exceed the total average monthly closing ledger balances of State Funds held or expected to be held by Cash Management Banks during the prior month, plus such additional amount of Eligible Collateral as OST may require Cash Management Banks to provide to protect against

volatility and ensure that all uninsured ledger balances are fully secured at the close of each business day. Eligible Collateral in the form of government securities shall be marked to market at the close of each business day using an independent pricing service. A Cash Management Bank may substitute or reduce Eligible Collateral provided that Eligible Collateral levels meet or exceed the foregoing requirements. OST shall be provided with same-day notice of any such substitutions or reductions of Eligible Collateral. In addition, a Cash Management Bank shall provide OST with a detailed report of Eligible Collateral held in a custody account as requested by OST.

5.2.2 **Money Market Mutual Funds.** State Funds held by Cash Management Banks in money market mutual funds shall be invested solely in government securities that meet the definitions set out in subsections 6.3.1 and 6.3.2 and which are rated in the highest rating category by at least one NRSRO.

5.3 **Call Reports.** Each Cash Management Bank shall provide OST with a consolidated report of condition and income, generally referred to as a “call report,” with respect to such financial institution on a quarterly basis unless such report is available publicly from the Federal Financial Institutions Examination Council’s web site or a successor agency’s website.

21 DE Reg. 968 (06/01/18)

23 DE Reg. 584 (01/01/20)

6.0 Liquidity Accounts

6.1 **Investment Objectives.** The primary investment objectives of the Liquidity Accounts are to maintain the safety of State Funds while ensuring the liquidity of such funds to be drawn down to the Cash Management Banks for the support of the anticipated funding needs of the State. As variations in the State’s otherwise predictable pattern of annual collections and disbursements do occur and can be material, Liquidity Managers must be prepared to meet unanticipated liquidity demands of the State in addition to those anticipated by OST. After the achievement of those goals, the State seeks to maximize the return on such investments.

6.2 **Maturity Restrictions.** The maximum maturity for any investment of State Funds in the Liquidity Accounts shall be two years from the date of settlement. Notwithstanding the foregoing, securities identified in subsections 6.3.4, 6.3.9, 6.3.10, and 6.3.11 that are subject to periodic reset of coupon or interest rate may have an average life not to exceed three years as measured from the date of settlement.

6.3 **Permissible Investments and Percentage of Account Limitations.** State Funds held in Liquidity Accounts can be invested solely in the types of securities set out in this subsection 6.3. Each Liquidity Manager is further subject to limit the aggregate value of State Funds invested in each type of security held in the account under such manager’s discretion to the “Percentage Limit” of such security type identified in this subsection 6.3, measured as a percentage of the total Liquidity Account value of State Funds under such manager’s discretion.

6.3.1 United States Treasury Obligations

6.3.1.1 Definition: Bills, bonds, and notes issued by the U.S. Treasury.

6.3.1.2 Percentage Limit: No limit.

6.3.2 United States Government Agency Obligations

6.3.2.1 Definition: Any obligation of, or obligation that is insured as to principal and interest by, the U.S. or any agency or corporation thereof (excluding bills, bonds and notes issued by the U.S. Treasury), and any obligation and security of U.S.-sponsored enterprises, limited to the Export-Import Bank of the United States, Farmers Home Administration, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Land Banks, Government National Mortgage Association, and the Federal National Mortgage Association.

6.3.2.2 Percentage Limit: 50% in total; 20% in any one issuer.

6.3.3 Certificates of Deposit and Time Deposits

6.3.3.1 Definition: Certificates of deposit and time deposits denominated in U.S. dollars and issued or endorsed by either (i) a bank or a savings and loan association organized and supervised under federal or any state laws and regulated by the Federal Reserve or a trust

company which is a member of the Federal Reserve system or (ii) a bank organized and supervised under the laws of Japan, Canada, United Kingdom, the Netherlands, Germany, France, Switzerland, Australia, New Zealand, Sweden, or Norway. Any such banking institution must have assets of not less than \$100 billion and be rated not lower than A1/P-1/F1 Short Term by at least two NRSROs.

6.3.3.2 Percentage Limit: 50% in total (domestic & non-domestic combined); 25% in all non-domestic banking institutions; 5% in any one issuer.

6.3.4 Corporate Debt Instruments

6.3.4.1 Definition: Commercial paper, variable rate notes, and non-convertible bonds and debentures denominated in U.S. dollars and issued by a U.S. corporation or a non-domestic corporation subject to the laws of Japan, Canada, United Kingdom, the Netherlands, Germany, France, Switzerland, Australia, New Zealand, Sweden, or Norway. Such securities must be rated by at least two NRSROs and (i) in the case of commercial paper, must be rated not lower than "A-2" by S&P, "P-2" by Moody's and "F2" by Fitch and the senior long-term debt of the issuer must be rated not lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch (excluding asset-backed commercial paper that is rated A-1 or better) and (ii) in the case of notes, bonds and debentures, must be rated not lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch; provided that, any security that meets the foregoing rating standards and is backed fully by an irrevocable, unconditional letter of credit issued by a banking institution shall not be permissible hereunder unless such banking institution meets the definition of subsection 6.3.3.1 (in which case, any such securities will be deemed to be securities of both the corporate issuer and the banking institution for purposes of calculating the Percentage Limits set forth in subsections 6.3.4.2 and 6.3.3.2, respectively).

6.3.4.2 Percentage Limit: 50% in total; 25% in all non-domestic corporations; 25% in any one industry; 5% in any one issuer.

6.3.5 Repurchase Agreements

6.3.5.1 Definition: Securities permissible pursuant to subsections 6.3.1 and 6.3.2 acquired from a primary dealer designated by the NY Federal Reserve Bank, or a domestic bank which meets the definition set out in subsection 6.3.3.1, subject to a written repurchase agreement from such dealer or bank; provided that, (i) in the case of securities held in book-entry form in the Federal Reserve System, all deliveries of such securities must be made through the Federal Reserve book-entry system to an account designated by the State's custodian for such purpose and (ii) in the case of securities held in certificated form, all deliveries of such securities must be made to such address as designated by the State's custodian.

6.3.5.2 Percentage Limit: 50% in total; provided that any securities purchased subject to repurchase agreements shall be subject to the respective Percentage Limit for such security type as set forth in this subsection 6.3 and valued for such purposes at the lesser of fair market value and 102 percent of the maturity value of the securities pursuant to the repurchase agreement and marked-to-the-market daily as requested by the investment manager.

6.3.6 Money Market Funds

6.3.6.1 Definition: Open-end money market mutual funds that are invested solely in government securities (as defined in subsections 6.3.1 and 6.3.2) and which are rated in the highest rating category by at least one NRSRO.

6.3.6.2 Percentage Limit: No limit.

6.3.7 Canadian Treasury Bills

6.3.7.1 Definition: Marketable securities issued by the government of Canada; provided that such securities are U.S. dollar denominated.

6.3.7.2 Percentage Limit: 25% in total.

6.3.8 Canadian Agency Securities

6.3.8.1 Definition: Any obligation of any Canadian government-sponsored agency that is insured as to principal and interest by the Canadian Government; provided that the obligation is U.S. dollar denominated commercial paper having a maximum maturity of 270 days from the date of settlement.

6.3.8.2 Percentage Limit: 25% in total; 10% in any one agency.

6.3.9 **Mortgage-Backed Securities**

6.3.9.1 Definition: Government National Mortgage Association, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation mortgage-backed securities issued in the form of pass-throughs; provided that, such securities have (i) been issued and guaranteed by the US Government or Government Agency and (ii) an average life not to exceed two years from the date of settlement (unless such securities are subject to periodic reset of coupon or interest rate, in which case the average life may not exceed three years from the date of settlement).

6.3.9.2 Percentage Limit: 10% in total, including securities defined in subsection 6.3.10.1.

6.3.10 **Asset-Backed Securities**

6.3.10.1 Definition: Securities collateralized by pools of auto loan receivables, credit card receivables, and equipment loans; provided that such securities have (i) the highest credit rating from at least two NRSROs and (ii) an average life not to exceed two years from the date of settlement (unless such securities are subject to periodic reset of coupon or interest rate, in which case the average life may not exceed three years from the date of settlement).

6.3.10.2 Percentage Limit: 10% in total, including securities defined in subsection 6.3.9.1.

6.3.11 **Supranational Organizations or International Agencies**

6.3.11.1 Definition: Any obligation issued by a supranational organization or international agency denominated in U.S. dollars under U.S. securities law for sale in the United States as well as globally; provided that such obligation is rated by at least two NRSROs and must not be rated lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch. Supranational organizations include, but are not limited to, the World Bank, Asian Development Bank, Inter-American Development Bank, International Bank for Reconstruction and Development, International Finance Corporation, and the Agency for International Development.

6.3.11.2 Percentage Limit: 25% in total, 10% in any one agency.

23 DE Reg. 584 (01/01/20)

7.0 Reserve Accounts

7.1 **Investment Objectives.** The Reserve Accounts have been established to provide funding over an intermediate horizon but must be available to meet unanticipated operating requirements of the State as they arise. The primary investment objectives are to maintain the safety of and maximize the return on such funds. Liquidity of such funds is a secondary consideration, but Reserve Managers are expected to invest State Funds in a manner to mitigate losses in connection with the need to liquidate investments for unforeseen operating requirements.

7.2 **Maturity Restrictions.** The maximum maturity for any investment of State Funds in the Reserve Accounts shall be ten years and one month from the date of settlement.

7.3 **Permissible Investments and Percentage of Account Limitations.** State Funds held in Reserve Accounts can be invested solely in the types of securities set out in this subsection 7.3. Each Reserve Manager is further subject to limit the aggregate value of State Funds invested in each type of security held in the account under such manager's discretion to the "Percentage Limit" of such security type identified in this subsection 7.3, measured as a percentage of the total Reserve Account value of State Funds under such manager's discretion.

7.3.1 **United States Treasury Obligations**

7.3.1.1 Definition: Bills, bonds, and notes issued by the U.S. Treasury.

7.3.1.2 Percentage Limit: No Limit.

7.3.2 United States Government Agency Obligations

7.3.2.1 Definition: Any obligation of, or obligation that is insured as to principal and interest by, the U.S. or any agency or corporation thereof (excluding bills, bonds and notes issued by the U.S. Treasury), and any obligation and security of U.S.-sponsored enterprises, limited to the Export-Import Bank of the United States, Farmers Home Administration, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Land Banks, Government National Mortgage Association, and the Federal National Mortgage Association.

7.3.2.2 Percentage Limit: 50% total; 20% in any one issuer.

7.3.3 Certificates of Deposit and Time Deposits

7.3.3.1 Definition: Certificates of deposit and time deposits denominated in U.S. dollars and issued or endorsed by either (i) a bank or a savings and loan association organized and supervised under federal or any state laws and regulated by the Federal Reserve or a trust company which is a member of the Federal Reserve system or (ii) a bank organized and supervised under the laws of Japan, Canada, United Kingdom, the Netherlands, Germany, France, Switzerland, Australia, New Zealand, Sweden, or Norway. Any such banking institution must have assets of not less than \$100 billion and be rated not lower than A1/P-1/F1 Short Term by at least two NRSROs.

7.3.3.2 Percentage Limit: 50% in total (domestic & non-domestic combined); 25% in all non-domestic banking institutions; 5% in any one issuer.

7.3.4 Corporate Debt Instruments

7.3.4.1 Definition: Commercial paper, variable rate notes, and non-convertible bonds and debentures denominated in U.S. dollars and issued by a U.S. corporation or a non-domestic corporation subject to the laws of Japan, Canada, United Kingdom, the Netherlands, Germany, France, Switzerland, Australia, New Zealand, Sweden, or Norway; provided that such securities must be rated by at least two NRSROs and (i) in the case of commercial paper, must be rated not lower than "A-2" by S&P, "P-2" by Moody's and "F2" by Fitch and the senior long-term debt of the issuer must be rated not lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch (excluding asset-backed commercial paper that is rated A1 or better) and (ii) in the case of notes, bonds and debentures, must be rated not lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch; provided that, any security that meets the foregoing rating standards and is backed fully by an irrevocable, unconditional letter of credit issued by a banking institution shall not be permissible hereunder unless such banking institution meets the definition of subsection 7.3.3.1 (in which case, any such securities will be deemed to be securities of both the corporate issuer and the banking institution for purposes of calculating the Percentage Limits set forth in subsections 7.3.4.2 and 7.3.3.2, respectively).

7.3.4.2 Percentage Limit: 50% in total; 25% in all non-domestic corporations; 25% in any one industry; 5% in any one issuer.

7.3.5 Repurchase Agreements

7.3.5.1 Definition: Securities permissible pursuant to subsections 7.3.1 and 7.3.2 acquired from a primary dealer designated by the NY Federal Reserve Bank, or a domestic bank which meets the definition set out in subsection 7.3.3.1, subject to a written repurchase agreement from such dealer or bank; provided that, (i) in the case of securities held in book-entry form in the Federal Reserve System, all deliveries of such securities must be made through the Federal Reserve book-entry system to an account designated by the State's custodian or such purpose and (ii) in the case of securities held in certificated form, all deliveries of such securities must be made must be made to such address as designated by the State's custodian.

7.3.5.2 Percentage Limit: 50% in total; provided that any securities purchased subject to repurchase agreements shall be subject to the respective Percentage Limit for such security type as set forth in this subsection 7.3 and valued for such purposes at the lesser of fair market value and 102 percent of the maturity value of the securities pursuant to the

repurchase agreement and marked-to-the-market daily as requested by the investment manager.

7.3.6 Money Market Funds

7.3.6.1 Definition: Open-end money market mutual funds that are invested solely in government securities (as defined in subsections 7.3.1 and 7.3.2) and which are rated in the highest rating category by at least one NRSRO.

7.3.6.2 Percentage Limit: 100% in total.

7.3.7 Canadian Treasury Bills

7.3.7.1 Definition: Marketable securities issued by the government of Canada, provided that such securities are U.S. dollar denominated.

7.3.7.2 Percentage Limit: 25% in total.

7.3.8 Canadian Agency Securities

7.3.8.1 Definition: Any obligation of any Canadian government-sponsored agency that is insured as to principal and interest by the Canadian Government; provided that the obligation is U.S. dollar denominated commercial paper having a maximum maturity of 270 days from the date of settlement.

7.3.8.2 Percentage Limit: 25% in total; 10% in any one agency.

7.3.9 Mortgage-Backed Securities

7.3.9.1 Definition: Government National Mortgage Association, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation mortgage-backed securities issued in the form of pass-throughs; provided that they have (i) been issued and guaranteed by the US Government or Government Agency and (ii) an average life not to exceed ten years (from the date of settlement of purchase).

7.3.9.2 Percentage Limit: 10% in total, including securities defined in subsection 7.3.10.1.

7.3.10 Asset Backed Securities

7.3.10.1 Definition: Securities collateralized by pools of auto loan receivables, credit card receivables, and equipment loans; provided that (i) such securities have the highest credit rating from at least two NRSROs and (ii) an average life not to exceed two years from the date of settlement (unless such securities are subject to periodic reset of coupon or interest rate, in which case the average life may not exceed three years from the date of settlement).

7.3.10.2 Percentage Limit: 10% in total, including securities defined in subsection 7.3.9.1.

7.3.11 Municipal Obligations

7.3.11.1 Definition: Taxable and tax-exempt securities issued by state and local governments and public authorities in the U.S., excluding securities issued by the State of Delaware, its local governments and public authorities; provided that such securities must be rated by at least two NRSROs and must be rated not lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch.

7.3.11.2 Percentage Limit: 20% in total; 5% in any one issuer.

7.3.12 Supranational Organizations or International Agencies

7.3.12.1 Definition: Any obligation issued by a supranational organization or international agency denominated in U.S. dollars under U.S. securities law for sale in the United States as well as globally; provided that such obligation is rated by at least two NRSROs and must not be rated lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch. Supranational organizations include, but are not limited to, the World Bank, Asian Development Bank, Inter-American Development Bank, International Bank for Reconstruction and Development, International Finance Corporation, and the Agency for International Development.

7.3.12.2 Percentage Limit: 25% in total, 10% in any one agency.

21 DE Reg. 968 (06/01/18)

23 DE Reg. 584 (01/01/20)

24 DE Reg. 716 (01/01/21)

8.0 Endowment Accounts

8.1 **Investment Objectives.** Endowment Accounts are funded with State Funds to be preserved and grown over time with a portion of the investment income and/or appreciation thereon withdrawn periodically to provide for specified legislative purposes. The primary objective of such Accounts is to create a perpetual fund whereby returns are maximized over the long term while ensuring safety of the corpus and the availability of amounts prescribed to meet the periodic liquidity requirements of the permitted withdrawals.

8.2 **Permissible Investments and Percentage of Account Limitations.** State Funds held in Endowment Accounts can be invested solely in the types of securities set out in this subsection 8.2. Each Endowment Manager is further subject to (i) limit the aggregate value of State Funds invested in each type of security held in the account under such manager's discretion to the "Percentage Maximum" of such security type identified in this subsection 8.2, measured as a percentage of the total account value of State Funds under such manager's discretion, and (ii) maintain a minimum of the aggregate value of State Funds invested in each type of security held in the account under such manager's discretion to the "Percentage Minimum" of such security type identified in this subsection 8.2, measured in each case as a percentage of the total account value of State Funds under such manager's discretion.

8.2.1 Money Market Funds

8.2.1.1 Definition: Open-end money market mutual funds that are invested solely in government securities (as defined in subsections 6.3.1 and 6.3.2) and which are rated in the highest rating category by at least one NRSRO.

8.2.1.2 Percentage Maximum: 30% in total.

8.2.1.3 Percentage Minimum Limit: none.

8.2.2 Domestic and International Equities

8.2.2.1 Definition: Common and preferred stocks of companies domiciled both within the U.S. and outside the U.S. that trade on U.S. or foreign exchanges and over the counter. Ownership in a publicly traded company, whether common or preferred, that trades on globally recognized exchanges, and issued by corporations, both foreign and domestic.

8.2.2.2 Percentage Maximum: 75% in total; no more than 35% of which are in international equities.

8.2.2.3 Percentage Minimum: 45% in total; no more than 35% of which are in international equities.

8.2.3 Domestic and International Fixed Income

8.2.3.1 Definition: Debt securities of U.S. and non-U.S. governments, public agencies, corporations and other non-government entities.

8.2.3.2 Percentage Maximum: 55% in total, including securities permitted under subsection 8.2.4.

8.2.3.3 Percentage Minimum: 25% in total, including securities permitted under subsection 8.2.4.

8.2.4 Alternative Investments

8.2.4.1 Definition: Securities not otherwise permissible pursuant to subsections 8.2.1 – 8.2.3 that a prudent manager would deem appropriate for portfolios of like character with comparable investment objectives, excluding hedge funds or other blind pool funds that incorporate leverage as part of their investment strategies.

8.2.4.2 Percentage Maximum: 25% in total.

8.2.4.3 Percentage Minimum: none.

23 DE Reg. 584 (01/01/20)

9.0 Operating Accounts

- 9.1 **Investment Objectives.** State agencies and other public authorities maintain various operating accounts with the intent of segregating such funds for accounting and reporting purposes. In addition, operating accounts may be created by the State to meet particular purposes and/or to comply with state statutes, bond trust agreements and/or Federal guidelines. The investment objectives with respect to such funds are to ensure safety and maximize return while providing for the liquidity requirements specifically identifiable to the use of such funds.
- 9.2 **Maturity Restrictions.** Unless otherwise determined by the Board, the maximum maturity for any investment of State Funds in the Operating Accounts shall be two years from the date of settlement. In some circumstances, State Funds in an Operating Account may be set aside to fund a known, specific future liability; in such cases, the Board grants OST the discretion to set the maturity restrictions with respect to securities purchased with such funds to correspond to the due date of the corresponding liability.
- 9.3 **Permissible Investments and Percentage of Account Limitations.** Unless otherwise determined by the Board, Operating Accounts shall be governed by the Permissible Investment and Percentage of Account Limitations for the Liquidity Accounts set out in subsections 6.2 and 6.3.

10.0 Settlement Accounts

- 10.1 **Investment Objectives.** State Funds in the Settlement Accounts remain for only a short period of time before transfer to a Collection and Disbursement Account. The primary investment objectives are therefore safety and liquidity of such funds; return is a secondary priority. OST may, consistent with these investment objectives, minimize credit risk associated with demand deposit account balances at Merchant Banks through same-day money market mutual fund sweep products in accordance with subsection 5.2.2. End-of-day ledger balances shall be secured as provided in subsection 5.2.1.
- 10.2 **Permissible Investments.** Merchant Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institutions.

23 DE Reg. 584 (01/01/20)

11.0 Restrictions & Violations

- 11.1 **Investment Restrictions.** Notwithstanding any other provision, none of the banks or managers engaged to manage or invest State Funds may:
- 11.1.1 Purchase any securities other than those expressly permitted under Sections 5.0 – 9.0 of these Guidelines;
 - 11.1.2 Make investments for the purpose of exercising control or management of an issuer;
 - 11.1.3 Purchase any securities on margin, except for use of short-term credit necessary for clearance of purchases and sales of portfolio securities;
 - 11.1.4 Make short sales of securities or maintain a short position or write, purchase or sell puts, calls, straddles, spreads or combinations thereof;
 - 11.1.5 Make loans to other persons, other than in connection with repurchase agreements as provided herein;
 - 11.1.6 Mortgage, pledge, hypothecate or in any manner transfer as security for indebtedness any securities owned or held;
 - 11.1.7 Invest in securities with legal or contractual restrictions on resale or for which no readily available market exists (except for repurchase agreements or variable rate master demand notes as provided herein and, if authorized under applicable U.S. Securities and Exchange Commission rules and regulations, 144a private placements considered not to be illiquid, but, instead, readily marketable by issuing dealers);
 - 11.1.8 Act as an underwriter of securities on behalf of the State of Delaware; or
 - 11.1.9 Buy or sell any authorized investment when it is a party or any related or affiliated party in the transaction on both sides.

- 11.1.10 Where these Guidelines require at least two NRSRO ratings for a security, the lowest such rating shall control.
- 11.2 **Purchases in Violation of Guidelines.** In the event that a bank or manager purchases any security that at the time of purchase violates Sections 5.0 – 10.0, the bank or manager shall remove the security from the State's portfolio by the close of the business day following the date on which the bank or manager learns of the violation and will bear all costs associated with the purchase and sale of such security. The bank or manager shall further ensure that the State recognizes no investment gain or loss on the purchase and sale of such security and/or shall effect such transactions as shall be necessary to eliminate any such gain or loss on the books and records of the State's Account with such bank or manager. A bank or manager shall report to OST any such violation and the remedial action(s) taken or proposed by the close of the business day following the date on which the bank or manager learns of the violation.
- 11.3 **Holding Impermissible Securities Following a Downgrade.** In the event that a bank or manager holds any security that complied with Sections 5.0 – 10.0 at the time of purchase, but which ceases to qualify as a permissible investment as the result of a downgrade, the bank or investment manager shall remove the security from the State's portfolio by the close of the business day following the date on which the bank or manager learns of the downgrade without any consideration as to the investment gains or losses occasioned thereby. In such case, the State shall bear all costs associated with the purchase and sale of such security and shall recognize any investment gain or loss on such transactions on the books and records of the State's Account with such bank or manager. A bank or manager shall report to OST any such downgrade and the remedial action(s) taken or proposed by the close of the business day following the date on which the bank or manager learns of the downgrade.
- 11.4 **Holding Impermissible Securities Following a Drawdown.** In the event that a manager's account exceeds the percentage of account limitations set forth in Sections 5.0 - 10.0 hereof as the result of a portfolio withdrawal, the manager shall provide to OST within two (2) business days, a detailed plan for remediation of the allocation to within the permissible percentage of account limitation. Such plan shall include: any expected pay-downs on structured securities, expected maturities and expected cash flow items. The manager and OST shall work together to determine a prudent path for remediation, with care taken to manage the overall portfolio risk and implications of any book gains or losses within the portfolio.
- 11.5 **Mutual or Commingled Fund Exceptions to Guidelines.** The Board recognizes that (i) mutual funds and other types of commingled investment vehicles can provide, under some circumstances, lower costs and better diversification than can be obtained with a separately managed fund pursuing the same investment objectives and (ii) such funds cannot customize their investment policies to conform to the guidelines set out herein. In such cases, unless OST, after consultation with the Board or the Board's consultant determines otherwise, the policies of such funds shall supersede these guidelines and are exempt from the policies and restrictions specified herein.

Originally adopted January 18, 1982

18 DE Reg. 462 (12/01/14)

20 DE Reg. 491 (12/01/16)

21 DE Reg. 968 (06/01/18)

23 DE Reg. 584 (01/01/20)

24 DE Reg. 716 (01/01/21)

APPENDIX C: Cash Management Policy Board Investment Architecture

DELAWARE CASH MANAGEMENT POLICY BOARD RESOLUTION NO. 2020-1 FURTHER AMENDING INVESTMENT ARCHITECTURE FOR THE STATE'S CASH ACCOUNTS¹

WHEREAS, the Delaware Cash Management Policy Board (the “**Board**”) is authorized and empowered by 29 *Del. C.* § 2716(a) to establish policies (a) for the investment of all money belonging to the State of Delaware (the “**State**”) or on deposit from its political subdivisions, except money deposited in any State pension fund or deferred compensation program, and (b) to determine the terms, conditions and other matters relating to the investment of State Funds, including the designation of permissible investments, the allocation between short- and long- term investments, the selection of investment managers (“**Managers**”) and the allocation of funds among the Managers;

WHEREAS, the Board has promulgated investment objectives and guidelines for the investment of State Funds, as memorialized in 1 *Del. Admin. C.* § 1201 (the “**Guidelines**”);

WHEREAS, under the Guidelines, unless otherwise determined by the Board, the Office of the State Treasurer (“**OST**”) has discretionary authority to allocate State Funds among the Cash Accounts in accordance with the general purposes of the Accounts and the investments objectives for those Accounts set forth in the Guidelines;

WHEREAS, the Guidelines do not expressly prescribe (a) the specific amounts or percentages of State Funds that must remain in the Cash Accounts, (b) the number of Liquidity or Reserve Accounts that will be maintained to manage State Funds, (c) the number of Managers that are required or authorized to provide investment services for the Liquidity and Reserve Accounts, (d) the benchmarks or benchmark proxies that will be used by OST and the Board to assess the performance of State Funds and the Managers, or (e) the treatment of restricted State Funds (“**Open Investment Issues**”);

WHEREAS, pursuant to Resolution No. 2017-1, the Board preliminarily approved an investment architecture addressing certain of the Open Investment Issues to provide a more detailed framework for the investment of State Funds;

WHEREAS, pursuant to Resolution No. 2018-1, the Board approved an Amended Investment Architecture that refined the benchmark guidance and Reserve Account structure;

WHEREAS, on April 15, 2020, at a special meeting of the Board’s Investment Subcommittee (the “**Subcommittee**”) at which a quorum of the members of the Subcommittee was present, the Subcommittee reviewed and discussed various changes to the Amended Investment Architecture;

WHEREAS, on May 6, 2020, at a regularly scheduled meeting of the Subcommittee at which a quorum of the members of the Subcommittee was present, the Subcommittee voted to recommend to the full Board certain proposed changes to the Amended Investment Architecture; and

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Guidelines or Resolution No. 2018-1, as appropriate.

WHEREAS, on May 27, 2020, at a regular public meeting of the Board at which a quorum of the members of the Board was present, the Board by unanimous vote approved the Second Amended Investment Architecture attached hereto as **Exhibit A** (the “**Second Amended Investment Architecture**”) and the form of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD:

1. The Second Amended Investment Architecture is approved and adopted by the Board, effective as of May 27, 2020.
2. OST and its officers and employees are authorized and directed to take such action as may be necessary or appropriate to effectuate or carry out the purpose and intent of this Resolution, including, without limitation, the execution and delivery of any documents, instruments, agreements or amendments as may be necessary, advisable or appropriate to implement the Second Amended Investment Architecture, and the taking of any such action shall conclusively evidence the appropriateness or necessity of any such documents, instruments or agreements.
3. The Board reserves the right to make any changes to the Second Amended Investment Architecture that it believes are in the best interest of the State.
4. All acts, transactions or agreements undertaken prior to the adoption of this Resolution by any member of the Board or any officers or employees of OST in connection with the matters authorized by this Resolution and all actions incidental thereto are hereby ratified, confirmed and adopted by Board.

Adopted by the Cash Management

Policy Board on May 27, 2020

John Flynn, Chairperson

ATTEST:

Colleen Davis, State Treasurer
& Board Member

EXHIBIT A

SECOND AMENDED INVESTMENT ARCHITECTURE FOR CASH ACCOUNTS

The following Second Amended Investment Architecture (the “Investment Architecture”) shall govern the management of the State’s Cash Accounts. The Investment Architecture is intended to provide the Office of State Treasurer (“OST”) and the Managers of such Accounts with a flexible framework to maintain the safety and availability of State Funds to meet the State’s immediate and intermediate funding needs and maximize the return on State Funds. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Guidelines or Board Resolution No. 2020-1, as appropriate.

I. Allocation Among Cash Accounts

Under the Investment Architecture, a certain portion of State Funds, as determined by OST, in its discretion, will be held in Collection and Disbursement Accounts and used to cover anticipated near-term transactions. Amounts exceeding the State’s projected near-term cash needs (“**Excess Cash**”) shall be invested and held in Liquidity or Reserve Accounts in accordance with the Guidelines and this Investment Architecture.

Unless the Board by majority vote determines otherwise, (a) the Liquidity Accounts should have a target balance of approximately twenty-five percent (25%) of Excess Cash, as determined by investment account balances reported at month end, and (b) Reserve Accounts shall hold all other Excess Cash. A discretionary buffer of five percent (5%) shall per permitted. If the aggregate balance of the Liquidity Accounts exceeds thirty percent (30%) of Excess Cash at the end of any month and is projected to continue to exceed such percentage for all or a significant portion of the following month, OST shall consult with the Chair of the Subcommittee, who shall have authority to direct OST to rebalance, or not.

II. Management of Liquidity Accounts and Managers

There shall be two (2) Liquidity Accounts, each with its own Liquidity Manager. The Liquidity Accounts will be managed in accordance with relevant sections of the Guidelines.

OST may in its discretion draw on Excess Cash in one Liquidity Account or both Liquidity Accounts to meet anticipated funding needs within a given fiscal year. Discretionary draws normally will be made on a pro rata basis. One or both of the Liquidity Accounts may be completely liquidated during certain periods of the fiscal year.

OST shall have discretion to replenish the Liquidity Accounts as revenues are received throughout the fiscal year. Refunding of the Liquidity Accounts normally will be made on a pro rata basis.

III. Management of Reserve Accounts and Managers

There shall be three (3) “Tiers” of Reserve Accounts, with each Tier having a unique investment maturity target. The Tier 1 Reserve Account has a maturity target of one (1) to three (3) years. The Tier 2 Reserve Account has a maturity target of one (1) to five (5) years. The Tier 3 Reserve Accounts have a maturity target of five (5) to ten (10) years. There shall be two (2) Tier 3 Reserve Accounts, each with its own Reserve Manager.

Excess Cash in the Reserve Accounts will be distributed among four (4) Reserve Managers. The Reserve Accounts will be managed in accordance with relevant sections of the Guidelines.

In the event the State has unanticipated funding needs, draws from the Reserve Accounts should be made on a pro rata basis. Refunding of the Reserve Accounts should likewise be made on a pro rata basis. OST may, with the consent of the Chair of the Subcommittee, deviate from the pro rata draw and refunding requirements.

IV. Restricted Amounts

The Tier 1 Reserve Account shall include the “Budget Reserve Account” provided for in art. VIII, § 6 of the Delaware Constitution of 1897. Excess Cash in the Budget Reserve Account may not be accessed absent a 3/5 vote of the members of each house of the General Assembly.

The Tier 2 Reserve Account shall include the “Budget Stabilization Fund” provided for in Section 77 of House Bill 225, the fiscal year 2020 Budget Bill. Draws from the Budget Stabilization Fund must be authorized by an act of the General Assembly.²

Amounts received directly by the State from the federal government in response to the Covid-19 emergency (“**Emergency Funds**”) shall be allocated pro rata to the Liquidity Managers and managed in separate liquidity accounts (“**Special Liquidity Accounts**”) in accordance with the Board’s directives. Emergency Funds held within Special Liquidity Accounts shall not be deemed Excess Cash for allocation purposes under Section I above.

V. Benchmark Proxies

Liquidity Managers. None.

Tier 1 Reserve Manager. The Benchmark Proxy for the Tier 1 Reserve Manager shall be: 100% invested in Intercontinental Exchange Bank of America Merrill Lynch (“**ICE BofAML**”) 1- to 3-year government/corporate bonds rated “A” or better

Tier 2 Reserve Manager. The Benchmark Proxy for the Tier 2 Reserve Manager shall be: 100% invested in ICE BofAML 1- to 5-year government/corporate bonds rated “A” or better.

Tier 3 Reserve Managers. The Benchmark Proxy for the Tier 3 Reserve Managers shall be: 100% invested in ICE BofAML 5- to 10-year government/corporate bonds rated “A” or better.

APPENDIX D: Form of Professional Services Agreement

This Professional Services Agreement (the “Agreement”) is entered into by and between the Office of the State Treasurer (“OST”) for the State of Delaware (the “State”), on behalf of itself and the Cash Management Policy Board (the “Board”), and [_____] (“Vendor”).

WHEREAS, in April 1, 2021, OST, on behalf of itself and the Board, issued a formal Request for Proposals (the “RFP”) pursuant to the State Procurement Code seeking proposals from qualified firms to provide investment custody services to OST, the Board and its subcommittees;

WHEREAS, OST and the Board desire to obtain from Vendor investment custody services as set out in the Statement of Work on **Exhibit 1** to this Agreement;

WHEREAS, Vendor desires to provide such services to OST and the Board on the terms set forth in the Agreement;

WHEREAS, OST, on behalf of itself and the Board, 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, OST and Vendor agree as follows:

1. Services and Term.

- 1.1. Vendor shall provide to OST, the Board and its subcommittees those services as set forth herein and as specified on the Statement of Work attached hereto as **Exhibit 1** (collectively, the “Services”). Vendor shall provide all Services in a fiduciary capacity and in accordance with the Project Schedule attached hereto as **Exhibit 3**.
- 1.2. The initial term of this 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. OST 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 subcommittee of the Board at such times and places as OST, the Board or a subcommittee may reasonably request. Vendor, if requested by OST, shall participate in meetings with other State agencies concerning investment-related issues. Vendor shall keep OST staff informed of progress and provide updates 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.

2. Payment for Services and Expenses.

- 2.1. OST will pay Vendor for the performance of Services in accordance with **Exhibit 2**.

- 2.2. OST's obligation to pay Vendor for the performance of Services will not exceed the annual fixed price and/or rates and limits set forth on **Exhibit 2**. Vendor is solely responsible for ensuring that all Services are completed for the agreed upon price and/or rates and within any applicable cap. Annual fees and/or rates shall be fixed for the initial term of the Agreement and, at OST's option, shall remain fixed for any extension period.
- 2.3. Unless otherwise agreed, all payments will be sent to Vendor's identified address on record with OST.
- 2.4. Vendor shall submit invoices to OST in arrears on a monthly basis. Services provided for a fixed annual price shall be prorated and billed monthly. OST agrees to pay undisputed amounts within 30 days of receipt. In the event that OST disputes all or any portion of an invoice, OST agrees to provide Vendor with a detailed statement of OST's position on the invoice, or disputed portion of the invoice, within 30 days of receipt.
- 2.5. All expenses incurred in the performance of the 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.
- 2.6. OST 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 by Vendor as a consequence of this Agreement.
- 2.7. OST shall have the right to setoff or subtract from any payment to be made to Vendor all damages, costs and expenses caused by Vendor's breach of the Agreement, or Vendor's negligence, gross negligence or other tortious or illegal conduct in connection with the provision of Services hereunder, to the extent such damages, costs and expenses have not otherwise been reimbursed by Vendor.
- 2.8. Invoices shall be submitted electronically to OST's Assistant Debt and Cash Manager, Stephen McVay at stephen.mcvay@delaware.gov with a copy to treasury_investment_services@delaware.gov.

3. [Reserved.]

4. Responsibilities of Vendor.

- 4.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services. 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 and deliverables furnished pursuant to this 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 this Agreement. If any Service or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (a) replace it with a conforming equivalent or (b) modify it to conform to DTI standards. Vendor shall be liable and indemnify the State and its officers, employees and attorneys for all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by the State or its agents or employees resulting from or attributable to Vendor's failure to comply with DTI standards and requirements.

- 4.3. [Reserved.]
- 4.4. It shall be Vendor's duty to assure that Vendor does not compromise the security, confidentiality, or integrity of information owned or 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 caused by its employees and contract employees, its subcontractors, and the employees and contract employees of its subcontractors. Vendor shall indemnify and hold harmless the State and its officers, employees and attorneys from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, the State may offset against and subtract from any payment to be made to Vendor any damages, costs and expenses caused by any such breach.
- 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. [Reserved.]
- 4.9. [Reserved.]
- 4.10. It shall be the duty of Vendor to assure that all Services and deliverables are technically sound and in conformance with all applicable federal, state and local statutes, codes, ordinances, resolutions and other regulations applicable to the Services. Vendor will not provide access to software, or produce work product, that violates or infringes on any copyright, trademark, patent or other intellectual property rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in the software or work product and shall indemnify the State and its officers, employees and attorneys for all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by the State or its officers, employees or attorneys resulting from or attributable to Vendor's failure to comply with this Section.

- 4.11. OST's review, approval, acceptance, or payment for any Services shall not be construed to operate as an admission or acknowledgement of any fact or circumstance, or a waiver of any rights under this Agreement or otherwise, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages caused by Vendor's breach or negligent performance or failure to perform under this Agreement.
- 4.12. Vendor shall appoint a senior employee who will manage the performance of Services and act as the single point of contact to OST.
- 4.13. Upon receipt of written notice from OST that an 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 in writing of any investigation, examination or other proceeding involving Vendor, or any key personnel or designated staff of Vendor, including a contract employee or a subcontractor, or any key personnel or designated staff of a subcontractor, commenced by any regulatory or law enforcement agency and involving allegations of fraud or illegal conduct, or a data breach.
- 4.15. Vendor agrees that its senior employee and other key personnel or designated staff will cooperate with OST in the performance of Services and will be available for consultation with OST upon reasonable request.
- 4.16. [Reserved.]
- 4.17. [Reserved.]
- 4.18. Vendor has or will retain such employees as it may need to perform the Services.
- 4.19. 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 prior written consent.
- 4.20. Vendor represents that it is properly licensed, registered and authorized to transact business and perform Services in the State.
- 4.21. Vendor will provide to OST audited or unaudited financial statements, as requested by OST.
- 4.22. Vendor shall be independent and shall provide advice and recommendations to OST and the Board free of any conflicts of interest and solely in the best interest of the State.

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.

- 5.2. OST shall pay for the Services as provided on **Exhibit 2**, subject to review for compliance with and the terms of this Agreement.

6. Ownership of Work Product and Data and Documents.

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

7. Confidential Information of the State.

- 7.1. "Confidential Material," as used herein, means all 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. The "CUSIP" numbers and other identifying information associated with individual securities held by Vendor under this Agreement shall be deemed Confidential Materials.
- 7.2. 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.
- 7.3. 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 destroyed or retained in accordance with Section 7.8.

- 7.4. 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 OST's interest therein.
- 7.5. 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 OST, the Board or the State through no breach of the Agreement;
 - d. has been developed independently by Vendor and without reliance upon Confidential Material.
- 7.6. Vendor shall take 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 password protected at all times.
- 7.7. 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.
- 7.8. Within six (6) months from the termination of the Agreement, all Confidential Material, regardless of form, shall be permanently deleted or destroyed in accordance with all applicable law, orders, rules and regulations and industry best practices. Any electronic data or documents 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, subject to Vendor's confidentiality obligations under this Agreement, retain copies of State data and documents to the extent required by applicable state or federal law, regulations, rules, or orders or Vendor's document retention policy.

- 7.9. The State shall have no obligation to disclose Confidential Material. OST may, in its discretion, provide or refuse to provide Confidential Material requested by Vendor.
- 7.10. Vendor understands and agrees that the State may suffer irreparable harm in the event that Vendor fails to comply with its 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.
- 7.11. Vendor's confidentiality obligations shall survive termination of the Agreement.

8. Warranty.

- 8.1. Vendor agrees to correct or re-perform any Services not in compliance with this Agreement in a timely manner.
- 8.2. Third-party products within the scope of this Agreement, if any, 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 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 vendors of such products and services (including warranty and indemnification rights), to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless OST, the Board, the State and their respective officers, members, employees and attorneys ("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 their respective officers, employees, contract employees or agents, arising out of or related to this Agreement ("Claims").
- 9.2. 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 Confidential Material, Vendor will defend such Claim at Vendor's expense if so requested by OST, in OST's sole discretion. Vendor will pay any costs or damages that may be finally awarded against an Indemnified Party.
- 9.3. Except for fees that may be due and owing as set forth in Section 2 above and **Exhibit 2** hereto, and notwithstanding anything to the contrary in this Agreement, neither OST, the Board or the State, nor any officers, members, employees or attorneys 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 alleged indemnification rights, arising out of or related in any way to this Agreement.

- 9.4. Notwithstanding anything to the contrary herein, no provision of this Agreement shall constitute or be construed as an indemnification obligation in favor of Vendor, or a waiver or limitation of any right of OST, the Board or the State that may exist under applicable law.
- 9.5. Notwithstanding anything to the contrary herein, to the extent available under applicable law, OST, the Board and the State, and their respective officers, members, employees and attorneys, 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 this Agreement in the courts of this State.

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 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—\$1,000,000.00 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. Cyber Liability – Vendor must maintain cyber security liability insurance coverage with limits of \$[in an amount TBD] 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. At a minimum, the policy must include coverage for any regulatory penalties and fines (to the extent insurable). Vendor shall be responsible for any deductible or self-insured retention contained in the insurance policy.
 - g. Excess/Umbrella policy - Excess/Umbrella \$[in an amount TBD] total (sits above underlying worker's compensation and employer's liability, general liability, and automotive liability).

- 10.2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered to OST.
- 10.3. Before any work is performed pursuant to this Agreement, certificate of insurance and/or copies of the insurance policies specified in Section 10.1 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**

- 10.4. In no event shall OST, the Board or the State, or their respective officers, members, employees or attorneys, 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 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 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 Vendor will, subject to scheduling and staffing considerations, attempt to honor OST's request for specific individuals.
- 11.3. Vendor shall be solely responsible for, and shall indemnify, defend and hold OST, the Board and the State, and their respective officers, members, employees and attorneys, harmless from all matters relating to the payment of Vendor's employees, contract employees, subcontractor or subcontractor's employees, including compliance with Social Security withholding and all other wages, salaries, benefits and taxes of any nature whatsoever.
- 11.4. Vendor acknowledges that Vendor and any agents or employees employed or contracted by Vendor shall not, under any circumstances, be considered employees of OST, the Board or 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.
- 11.5. Vendor shall be responsible for providing liability insurance for its personnel and agents.
- 11.6. 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 fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

- 12.1. OST may for any reason suspend performance by Vendor under this Agreement for such period of time as OST, in its discretion, may prescribe by providing written notice to Vendor. Upon receipt of such notice, Vendor shall not perform further work under this Agreement until Vendor's receipt of written notice from OST to resume performance.
- 12.2. OST shall pay Vendor compensation earned through the effective date of suspension, less all previous payments and subject to any rights of offset or recoupment that OST or the State may have against Vendor.

13. Termination.

- 13.1. This 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 14 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 OST for its convenience, but only after Vendor is given 30 calendar days' written notice of intent to terminate.
- 13.3. If termination is effected, OST will pay Vendor that portion of compensation earned for Services provided as of the effective date of termination, but:
 - a. No amount shall be allowed for anticipated profit on unperformed Services or other work;
 - b. Any payment due to Vendor at the time of termination may be adjusted or reduced to the extent of the State's offset or recoupment rights; and
 - c. In the event Vendor ceases conducting business, OST shall have the right to make an unsolicited offer of employment to any officers or employees of Vendor.
- 13.4. In connection with any notice issued under this Section 13, OST may immediately retain another vendor to perform the Services. Vendor shall at all times cooperate in the transition and shall perform such Services and additional services as OST shall determine are necessary or appropriate to enable the transition of work to a successor vendor or vendors. 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 or additional services are no longer needed.
- 13.5. 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.

- 13.6. The termination of this Agreement shall not terminate indemnification or confidentiality rights or obligations, or any other rights or obligations that are intended to or customarily extend beyond termination.
- 13.7. The rights and remedies of OST provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.8. Gratuities.
- a. OST may, by written notice to Vendor, terminate this 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 this Agreement.
 - b. In the event this 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 this Agreement by Vendor.
 - c. The rights and remedies of OST, the Board and the State provided in Section 13.8 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.9. Validity and enforcement of this 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 this Agreement without liability, and (b) the Agreement shall be terminated without liability as to any obligation of OST requiring the expenditure of money for which no specific appropriation is available.

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 OST shall be void.
- 14.2. Vendor's employees shall perform all Services, unless OST consents 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 software, 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 the terms of this Agreement, including all exhibits.
- 14.3. 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 this Agreement by any use temporary staff, independent contractors or a subcontractor.

- 14.4. The compensation otherwise 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.

15. Complete Agreement.

- 15.1. This Agreement and its exhibits, which are incorporated herein by reference, shall constitute the entire Agreement between OST 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. Notwithstanding the foregoing, or any other provision of this Agreement, all oaths, representations and warranties made by Vendor through participation in the RFP process, including, without limitation, all written representations made by Vendor in Vendor's proposal concerning Vendor's experience and capabilities, shall survive execution and become part of the 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 to this Agreement, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement, modify and supersede the terms and conditions of this Agreement. 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 of this Agreement.

16. Miscellaneous Provisions.

- 16.1. Except for fees that may be due and owing as set forth in Section 2 above and **Exhibit 2** hereto, Vendor shall solely bear the 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 whom enforcement is sought.

- 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 represents and 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 this Agreement. Vendor will immediately notify OST of any material change to such representation that arises during the term of the Agreement, including any extension period.
- 16.5. Vendor acknowledges that OST, the Board and the State have obligations to ensure that public funds and resources 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 OST 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.
- 16.6. Vendor warrants that no person or entity 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, OST shall have the right to terminate this Agreement without liability.
- 16.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either party.
- 16.8. At the option of OST, the parties shall attempt in good faith to resolve any dispute arising out of or relating to this 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.
- 16.9. Any disputes, claims or controversies arising out of or relating to this Agreement that are not resolved through resolution pursuant to Section 16.8, may be submitted to mediation if OST so elects. 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.

- 16.10. The rights and remedies of OST and the State provided for in this Agreement are in addition to any other rights and remedies provided by law or at equity.
- 16.11. Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance of its obligations under this 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.
- 16.12. This Agreement, including all exhibits, and its contents, including pricing information, is a public document subject to mandatory disclosure under the State's Freedom of Information Act, 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 reasonably designated as "confidential" by Vendor, OST will, to the extent reasonably practicable, give Vendor prior written notice of such disclosure or potential disclosure.
- 16.13. The provisions of this Agreement are for the sole benefit of the parties hereto. This Agreement confers no rights, benefits or claims upon any person or entity not a party hereto, including any permitted independent contractor or subcontractor approved by OST.
- 16.14. The terms of the RFP and any addenda or answers to RFP questions (the "RFP Documents") are incorporated herein by reference and govern the Services and Vendor except to the extent the terms of the RFP Documents conflict with the terms of this Agreement. When construing or interpreting the Agreement (a) the terms of the exhibits shall control and take precedence over the main text of the Agreement; and (b) the terms of the Agreement, including all exhibits, shall control and take precedence over the RFP Documents.

17. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by OST, 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 and other work product purchased or acquired by OST, the Board or the State pursuant to this Agreement.

18. Governing Law.

This 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.

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 electronically to the following addresses:

If to OST:
Attn:

If to Vendor:
Attn:

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be duly executed as of the date indicated below.

**STATE OF DELAWARE, by and through
the OFFICE OF THE STATE
TREASURER, on behalf of the CASH
MANAGEMENT POLICY BOARD**

Signature

Name

Title

Date

[VENDOR]

Signature

Name

Title

Date

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

**Exhibit 1 – Statement of Work
(to be negotiated)**

**Exhibit 2 – Fee Schedule
(to be negotiated)**

Exhibit 3 – Project Schedule

PROPOSED PROJECT SCHEDULE

Task/Milestone	Date
Fully Executed Agreement	September 30, 2021
Implementation Period	October 1, 2021 – November 30, 2021
Investment Custodian Services - Start Date	December 1, 2021