

**REQUEST FOR PROPOSALS FOR
PROGRAM CONSULTING SERVICES
ISSUED BY THE OFFICE OF THE STATE TREASURER**

CONTRACT NUMBER: TRE23101-EARNSPGMCON

I. Overview

By this request for proposals (the “RFP”), the Office of the State Treasurer (“OST”), on behalf of the EARNs Program Board (the “Board”), is seeking proposals from qualified firms (“Consultants”) interested in providing program consulting services to the State of Delaware (the “State”) as detailed in the Scope of Services attached hereto as **Appendix A**. The selected Consultant will advise the Board and OST on matters including but not limited to program structure and design, program implementation, program administration, procurement, standards, best practices, marketing and distribution, and compliance, as related to the Delaware Expanding Access to Necessary & Retirement Savings (EARNs) program (the “Program”).

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

CONSULTANT ELIGIBILITY: Any prospective Consultant that does not meet the following criteria will not qualify for this RFP process:

1. Consultant must have a minimum of three years of experience providing retirement program consulting services to public-sector entities.
2. Consultant must have experience assisting public-sector entities with the procurement of either program administration, investment consulting or investment management and demonstrated experience developing and implementing government-sponsored savings plans.
3. Consultant must possess all necessary business licenses, including a valid State business license, certification(s) necessary to perform services identified herein, and proof of insurance required under the PSA.
4. Consultant must hold and maintain all licenses and registrations required by applicable federal and state laws and provide proof that all such licenses and registrations are current and in good standing.

A. Timetable

The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP published	12/05/2022
Deadline for Consultant questions	12/19/2022
Deadline for State responses- Q&A closed and published	12/27/2022
Deadline for Consultant proposal submission	01/17/2023
Finalists' presentations (virtual)	02/20/2023 - 02/24/2023
Finalist selected (Board approval)	TBD
Estimated award notifications	3/31/2023

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.

Consultants 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

Consultants 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 each successful Consultant and the State shall be two (2) years, with OST having four (4) one-year extension options, each exercisable in OST's sole discretion, subject only to Board approval.

D. Designated Contact

This RFP process will be managed by OST's Senior Policy Advisor (the "Designated Contact"):

Name: Matthew Rosen
Title: Senior Policy Advisor
Address: 820 Silver Lake Boulevard, Suite 100
City/State: Dover, DE
ZIP: 19904
Email: Matthew.Rosen@delaware.gov
Phone: 302-577-4213

E. Submission of Written Questions

All questions about the RFP shall be submitted to the Designated Contact listed above via e-mail on or before 4:00 p.m., prevailing Eastern time, on December 19, 2022.

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

The State will provide written responses to questions from prospective Consultants no later than December 27, 2022. Responses will be placed on <http://bids.delaware.gov>.

II. Background

A. The EARNs Program

In August 2022, Gov. John Carney signed HB 205 (the “Authorizing Legislation”) into law, creating the Delaware Expanding Access to Retirement & Necessary Savings (EARNs) program and authorizing the formation of the EARNs Program Board. The Program’s purpose is to promote retirement savings by offering an automatic enrollment, payroll deduction IRA (“Auto-IRA”) to Delaware private-sector workers who are not otherwise covered by an employer-sponsored retirement plan. The Program will enhance access to retirement savings in a convenient, low-cost, and portable manner and will increase retirement savings for many Delaware residents.

Additional information about the Program can be found at <https://treasurer.delaware.gov/earns/> or [Title 19, Chapter 38 of the Delaware Code](#). Also, the Authorizing Legislation is attached hereto as **Appendix C**.

B. The EARNs Program Board

The Board is responsible for overseeing the design, implementation, and initial administration of the Program. Once Program implementation is complete, the Board will

dissolve, and the duties and functions of the Board shall be transferred to and assumed by the Plans Management Board, no later than December 31, 2025.

The Board consists of 7 members:

- Four ex-officio members serve by virtue of their office, each of whom may designate a person to serve in their stead and at their pleasure:
 - The State Treasurer.
 - The Secretary of Finance.
 - The Insurance Commissioner.
 - The Secretary of Labor.
- The chairperson of the Plans Management Board, who may designate a member of the Plans Management Board or 1 of its committees to serve in the chairperson's stead and at the pleasure of the chairperson.
- Two public members appointed by the Governor who, by reason of education or experience, are qualified to serve.

The Board is required to meet at least four times a year. The Board has created three standing committees that will also meet at least four times a year. The standing committees are as follows: 1) Audit, Policy & Governance Committee; 2) Program & Investment Committee; and 3) Outreach & Engagement Committee.

For more information on the Board, see https://treasurer.delaware.gov/earns_board/ or [19 Del. C. § 3803](#). For more information on the Plans Management Board, see <https://treasurer.delaware.gov/plans-management-board/>.

C. The Office of the State Treasurer

OST provides administrative support to the Board and its committees. OST is responsible for initiating and managing all procurement and regulatory processes related to the Program and carrying out such other program-related functions as may be delegated by the Board. For more information on OST, visit <https://treasurer.delaware.gov/>.

III. Scope of Services

By this RFP, the Board seeks to retain a Consultant 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 or the Board. Specifically, the Board seeks the services of a Consultant to perform at least the following services:

- Assist OST staff and the Board in developing Program design including, but not limited to, Program structure, enrollment phases, implementation, general administration, marketing and outreach, and success metrics.
- Provide relevant information, research, strategic advice, and recommendations to OST and the Board on subjects including, but not limited to, industry developments, legislative and regulatory issues, interstate partnerships, marketing and outreach, communications, program administration, program implementation, procurement, cyber security, default contribution rates, the enrollment process, risk management, vendor management, best practices from other state-administered Auto-IRA programs, and other relevant issues.
- Participate in the development of requests for proposals and the subsequent review, selection, contract writing, and contract negotiations for vendors such as the program administrator, investment manager, investment consultant, independent auditor, and legal services provider.
- Develop, or assist with the development of, regulations, disclosure language, operating procedures, risk management policies, vendor management policies, marketing plans, benchmarks, projections, budgets, and an implementation timeline.
- Assist the Board and OST with exploring the feasibility and desirability of an interstate partnership and the evaluation of potential state partners.
- Attend all Board meetings and committee meetings unless notified otherwise by the Board.
- Upon request, present research, reports, and/or analysis at meetings, and respond to any questions.
- Provide education and training to the Board, including, but not limited to fiduciary training, as well as education on investment and administration trends, issues in the defined contribution industry, and other relevant topics, as requested.
- Analyze Program performance including, but not limited to, marketing/outreach performance, enrollment, industry and third-party comparison, historical performance, program administration, and cost analysis. Accordingly, Consultant shall develop and track metrics to measure performance and create reports on program performance.
- Conduct a market analysis and feasibility study that will, among other things, survey potential participating employers and employees and collect pertinent information to assist in Program design and implementation, and determine minimum Enrollee participation rates sufficient to maintain a self-sustaining Program.

IV. Minimum Requirements to Submit a Proposal

Consultant submissions will not be considered unless the Consultant (a) clearly demonstrates in the proposal how the Consultant meets the Consultant eligibility requirements set forth on

page one 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:

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

3. Assistance to Consultants with a Disability

Consultants 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: Matthew.Rosen@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 Consultant responses. Consultants 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. Consultants who make contact in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Consultants 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. Consultants who directly contact a State employee in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Consultants 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 Consultants 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 Consultant'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 Consultant's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

A Consultant 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 Consultant 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 Consultant 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.

Consultants 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 Consultant from the RFP process.

2. Proposal Delivery

All proposals must be **received no later than 4:00 p.m., prevailing Eastern time, on January 17, 2023** (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. Consultants must successfully upload all the file(s) and must click the submit button before the proposal due date and time.

Consultants 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 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 Consultant 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. Bonfire will create a public log containing the names of all Consultants that submitted proposals with the dates and times of the State's receipt of each proposal.

6. 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.

7. Confidentiality of Documents

Except as noted below, all documents submitted as part of a Consultant'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 public disclosure of any Consultant's proposal 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 Consultants desire to protect intellectual property, trade secrets and other confidential business information (collectively referred to herein as "confidential business information"). If a Consultant 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 Consultant's confidential business information may be lost.

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

Consultants 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 Consultant'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 Consultant'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

Consultant designation as set forth in this section. Any Consultant 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, Consultants assume the risk that confidential business information included within a proposal may enter the public domain.**

8. Sub-Contracting

Subcontracting is not permitted without OST's prior written consent. Any Consultant 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 Consultant and the State.

9. Discrepancies and Omissions

Consultants 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 Consultants. Should a Consultant find discrepancies, omissions, or unclear or ambiguous language in this RFP, the Consultant 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.

10. RFP Question and Answer Process

OST will allow written requests for clarification of the RFP. Consultants 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 December 19, 2022. Questions must be submitted electronically to the following email address: Matthew.Rosen@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 December 27, 2022 or such other date and time as may be

prescribed by OST. Consultant 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.

11. 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 Consultant's response), to assess the merits and qualifications of each proposal and Consultant, 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.

12. 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 Consultant.

A Consultant's participation in this RFP process may result in the State selecting the Consultant 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.

13. State's Right to Award Multiple Source Contracting

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

14. Notification of Withdrawal of Proposal

A Consultant 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.

15. 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>.

16. 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. Consultants 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.

17. Exceptions to the PSA

Attached hereto as **Appendix B** is OST's standard form of PSA and related exhibits. The terms of the PSA will govern the contractual relationship between a Consultant and the State. Any exceptions to the PSA, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 3**. Consultants shall provide a redlined version of the PSA ("Redline") reflecting all requested changes. Consultants 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.

18. 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 Consultant 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 Consultant other than the Consultant 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 Consultant and published only after (a) the Board authorizes the issuance of an Award, and (b) OST and each such Consultant execute a formal PSA on terms acceptable to OST and the Board. No Consultant 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 Consultant shall be matters of public record subject to disclosure under FOIA.

VI. Proposal Requirements and Evaluation

A. Required Information

1. Index of Tabs

Consultants 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 Consultant satisfies the minimum qualifications set forth in Section IV.
- A summary of the Consultant’s services, experience, and interest in providing these services to the State; and
- A statement indicating whether the proposal contains confidential business information.

Tab B: Questionnaire(s). Provide detailed response to each question posed in **Attachment 1**. Responses should be both complete and concise.

Tab C: Pricing Proposal. Please provide a fee proposal for the consulting services for the original two-year term. OST prefers an “all-in,” flat-fee structure for services outlined in **Appendix A**. If Consultant has additional fees or expenses for services not included in the flat fee, please provide a schedule of all such fees or expenses.

Tab D: Confidential Information Form. Consultants 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 Consultants 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 B**, reflecting all proposed changes to the PSA, which changes may be accepted or rejected in OST’s discretion. Successful Consultants who do not propose changes are deemed to have consented and irrevocably agreed to the PSA.

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

2. Furnishment of Proof

Prior to Award, if not already provided, the successful Consultant 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 Consultants 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 Consultant 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

Consultants must review the evaluation criteria below and provide responses that address the criteria. The Evaluation Team will not make assumptions about Consultant capabilities.

The State has outlined the services it will require in Section III and **Appendix A**. In formulating responses, Consultants 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>FIRM AND PERSONNEL QUALIFICATIONS</p> <ul style="list-style-type: none"> ▪ Availability of firm resources (10) ▪ Years and relevance of firm experience (5) ▪ Years and relevance of personnel experience (5) ▪ Ability to perform all services (10) 	30
<p>DESIGN & IMPLEMENTATION Consultant's ability to assist with the design and implementation of new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.</p>	15
<p>OPERATIONS EXPERIENCE Consultant's ability to assist with the operations of new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.</p>	5
<p>GENERAL ADVISORY SERVICES Consultant's ability to provide general advisory services to new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.</p>	10
<p>MARKETING EXPERIENCE Consultant's ability to assist with the marketing of new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.</p>	10
<p>RFP EXPERIENCE Consultant's ability to assist with the drafting of RFPs and reviewing and evaluating proposals for new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.</p>	15
<p>RESEARCH AND ANALYTICAL QUALIFICATIONS Consultant's ability to provide research, reports and analysis to new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.</p>	5
<p>Pricing proposal (structure and cost)</p>	10
<p>TOTAL POINTS</p>	<p>100</p>

4. Proposal Clarification

The Evaluation Team may communicate with a Consultant in order to clarify uncertainties or gain better understanding of a proposal. The Evaluation Team may

require Consultants to modify or supplement their proposals as a result of such communication. Consultants 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 Consultant 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 Consultant outside of the reference list, and any information gained may be used in the evaluation process. Consultants 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 Consultants to make in-person or virtual presentations to the Evaluation Team. The presentations shall not be independently scored but new or clarifying information obtained during a presentation may provide the basis for an adjustment of the scoring based on the criteria above. Any such adjustment shall be adequately explained and documented by the appropriate Evaluation Team members. Presentations are tentatively scheduled for the week of February 20, 2023. **Any costs associated with presentations will be borne by the Consultant.** The State requests that all individuals who are expected to be assigned to this engagement be in attendance.

VII. Contract Process

A. Formal Contract

Consultants 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 B** (the "Contract"). A Consultant's attempt to negotiate pricing or other material Contract terms that were not disclosed through the exception process and detailed in the

Consultant's response may result in the termination of negotiations with, and/or the disqualification of, such Consultant.

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 Consultant 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 Consultant.

D. Inception of Services

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

E. Cancellation of Award

If a Consultant that receives an Award fails to commence providing 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 Consultant.

F. Collusion or Fraud

Consultants may not restrain competition by agreement to offer a fixed price, or otherwise. By responding to this RFP, each Consultant shall be deemed to have represented and warranted that: (i) its proposal is not made in connection with any competing Consultant submitting a separate response to this RFP; (ii) its approval is in all respects fair and without collusion or fraud; (iii) the Consultant 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 Consultant'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 Consultant.

G. Lobbying and Gratuities and Contingency Fees

As required by 29 *Del. C.* § 6903(b), the successful Consultant is deemed to have sworn under oath that the Consultant 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 Consultant 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 Consultant, 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, Consultant shall not, directly or indirectly, solicit any employee of the State to accept employment with the Consultant, its affiliates, or any person acting in concert with Consultant, 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: Consultant Questionnaire

Attachment 2: Confidential Information Form

Attachment 3: Exception Form

Attachment 4: Business References

Appendices

Appendix A: Scope of Services

Appendix B: Form of Professional Services Agreement

Appendix C: Authorizing Legislation

ATTACHMENTS

ATTACHMENT 1: Consultant Questionnaire
CONTRACT NUMBER: TRE23101-EARNSPGMCON

A. FIRM AND PERSONNEL QUALIFICATIONS

- 1) Provide an overview and history of the Consultant's firm including mission statement and vision statement, number of years of experience providing consultation, and what services Consultant's firm will bring to this contract.
- 2) Identify the personnel that will be providing the services if awarded the contract, including proposed role in the contract, his/her title, and bio including years and type of experience for each person. Experience should include number of years at the current firm as well as all prior relevant employment. Please also include staff of proposed subcontractors, if any.
- 3) Indicate who will have ultimate responsibility for this contract. Indicate the availability of this person for live or telephone meetings with the Board and OST staff. Describe the Consultant's backup procedures if the primary person assigned to this account leaves the firm, or is otherwise unavailable.
- 4) Describe Consultant's ability and commitment to make the resources available to avoid any resource constraints against competing client priorities or engagements.
- 5) Please affirm the Consultant's ability to perform every item in Appendix A, Scope of Services. If applicable, please identify any items in the Scope of Services the Consultant cannot perform, or would need to provide through a subcontractor, if permitted.

B. DESIGN & IMPLEMENTATION

- 6) Please describe the Consultant's experience in assisting with the creation and implementation of new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.
- 7) Please describe the Consultant's ability to assist the Board and OST with the exploration, establishment, and management of an interstate partnership.
- 8) If Consultant has been involved with the development and implementation of a state-run investment program, please describe the experience in detail, including the key considerations and challenges in advising on the start-up of a new state-run investment program. What does the Consultant see as the biggest challenge for Delaware and how would the Consultant address it?

C. OPERATIONS EXPERIENCE

- 9) Please describe the Consultant's experience in assisting with the operation of retirement programs, with a particular focus on state-facilitated Auto-IRA programs.
- 10) Please describe the Consultant's experience assisting with the development of program documents and forms, regulations, disclosure language, operating procedures, risk management policies, vendor management policies, benchmarks, projections, budgets, and implementation timelines.

- 11) Please provide examples of the Consultant's ability to address programmatic issues and challenges, including, but not limited to, program launch, changes in program vendor(s), inclusion of new products or features, and/or redesigning program infrastructure.
- 12) Please describe the Consultant's approach to investment programs that enroll many low to moderate-income earners.

D. GENERAL ADVISORY SERVICES

- 13) Describe the Consultant's experience in advising boards, board members, executive directors and other personnel & entities on retirement program industry matters. Include the names of the boards/entities, the size of the plans (number of accounts), types of plans (savings or prepaid), the number of years that the Consultant has provided this service, the number of boards/entities to which the Consultant is currently providing retirement program related advice and the approximate dollar value of the portfolios for which consultative services are provided. Explain how this experience will benefit the Board.
- 14) Discuss any changes/material refinements in Consultant's advising philosophy which have occurred within the past three years. What prompted the changes/refinements?
- 15) Describe Consultant's ability to assist the Board and the Program's Executive Director.
- 16) Describe Consultant's ability to provide education and training to the Board and its committees, including fiduciary training.
- 17) Is the Consultant qualified to provide additional guidance on investments and investment performance? (The Board will have a primary investment consultant.) If so, describe the Consultant's experience with providing such guidance.

E. MARKETING EXPERIENCE

- 18) Please describe the Consultant's experience with advising on program marketing and materials.
- 19) Provide a general overview of your methodology for creating marketing and outreach materials that are consistent with Program goals and relevant to diverse populations including low-income, rural, women, minority, and non-native English speaking people.

F. RFP EXPERIENCE

- 20) Please describe the Consultant's experience with drafting and reviewing RFP's for new retirement programs, with a particular focus on state-facilitated Auto-IRA programs.
- 21) Please indicate whether the Consultant is able to assist in the RFP proposal evaluation phase and whether the Consultant has experience in this regard.

G. RESEARCH AND ANALYTICAL QUALIFICATIONS

- 22) Provide at least two recent examples of client research, reports or analysis prepared for the purpose of informing the design, implementation and/or operations for retirement programs, preferably related to state-facilitated Auto-IRA programs, if possible.
- 23) Describe the Consultant's ability to conduct a market analysis and feasibility study which would, among other things, survey potential participating employers and employees and collect pertinent information to assist in Program design and implementation, and

determine minimum enrollee participation rates sufficient to maintain a self-sustaining Program.

- 24) Describe the Consultant's ability to develop and track metrics to measure Program performance, as well as the ability to use the metrics to make comparisons between the Program and similar programs in other states.

ATTACHMENT 4: Business References

CONTRACT NUMBER: TRE23101-EARNSPGMCON

List a minimum of four (4) business references. At least one (1) 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 five (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: TRE23101-EARNSPGMCON

Consultant will be expected to perform Services necessary to assist with the development, implementation, operation, and management of the Program in accordance with Delaware Code and other applicable law. Services may be required to be provided on-site or remotely, as determined by OST. Consultant will act as a fiduciary to the Program and will work under the direction of OST consistent with authority delegated by the Board.

1) Timeline of Performance

Consultant will be expected to provide a timeline reflecting the particular services that Consultant expects to perform.

2) Design, Implementation, and Program Operations

- Assist OST staff and the Board in developing Program design including, but not limited to, Program structure, enrollment phases, implementation, general administration, marketing and outreach, and success metrics.
- Provide relevant information, research, strategic advice, and recommendations to OST and the Board on subjects including, but not limited to, industry developments, legislative & regulatory issues, interstate partnerships, marketing and outreach, communications, program administration, program implementation, procurement, cyber security, default contribution rates, the enrollment process, risk management, vendor management, best practices from other state-administered Auto-IRA Program, and other relevant issues.
- Participate in the development of requests for proposals and the subsequent review, selection, contract writing, and contract negotiations for vendors such as the program administrator, investment manager, investment consultant, independent auditor, and legal services provider.
- Assist the Board and OST with the recruitment and selection of an Executive Director for the Program.
- Develop, or assist with the development of, regulations, disclosure language, operating procedures, risk management policies, vendor management policies, marketing plans, benchmarks, projections, budgets, and an implementation timeline.
- Assist the Board and OST with programmatic issues and challenges, including, but not limited to, program launch, changes in program vendor(s), inclusion of new products or features, and/or redesigning program infrastructure.
- Provide additional guidance on investments and investment performance if Consultant is qualified. The Board will have a primary investment consultant.
- Assist the Board and OST with exploring the feasibility and desirability of an interstate partnership and the evaluation of potential state partners.
- If Board elects to enter into an interstate partnership, assist the Board and OST with the negotiation and drafting of the interstate agreement and thereafter provide ongoing guidance on the management of the interstate partnership.

- Provide a presentation to the Board with recommendations about whether to pursue an interstate partnership, which state(s) to partner with, and how to proceed with formalizing an agreement.

3) General Services

- Assist with public hearings and stakeholder meetings, as requested by OST or the Board.
- Attend all Board meetings and committee meetings unless notified otherwise by the Board. It is anticipated that the Board, as well as each of the Board's three (3) standing committees, will generally meet quarterly.
- Attend other meetings with or on behalf of the Board or OST, as requested.
- Upon request, present research, reports, and/or analysis at meetings, and respond to any questions.
- Provide education and training to the Board and its committees, including, but not limited to fiduciary training, as well as education on investment and administration trends, issues in the defined contribution industry, and other relevant topics, as requested.
- Assist, advise, and collaborate with the Board's other contractors, including the investment consultant, program manager, and record keeper, as needed.
- Be available to consult with Board members and the Executive Director from 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.
- Respond to the need for telephone consultation within a 24-hour period and be available for meetings with the Board on short notice.

4) RFP for Program Administrator Services

When requested by the Board or OST, Consultant shall facilitate the development and drafting of a scope of work for an RFP for program administrator services, based on industry best practices, statutory/regulatory requirements, and Board principles. Tasks associated with the RFP may include, but are not limited to:

- Assisting OST and necessary State personnel in structuring the technical and cost components of the RFP.
- Researching issues as may be needed to create the scope of work or assist the Board with making determinations related to the scope of work.
- Acting as a subject matter expert to the Board and Evaluation Team, and assisting in the evaluation as needed.

5) Reporting

- Consultant, working alongside Program staff and under the direction of OST, shall analyze Program performance including, but not limited to, marketing/outreach performance, enrollment, industry and third-party comparison, historical performance, program administration, and cost analysis. Accordingly, Consultant shall develop and track metrics to measure performance and create reports on program performance. These reports shall include comparisons between the Program and similar programs in other states.
- Upon request, Consultant shall develop reports with recommendations for Program structure, administration, implementation and operation.

- Provide analysis of the Program vendors using monthly, quarterly, and annual data.

6) Market Analysis and Feasibility Study Services

The Consultant will conduct a market analysis and feasibility study which will, among other things, survey potential participating employers and employees and collect pertinent information to assist in Program design and implementation, and determine minimum Enrollee participation rates sufficient to maintain a self-sustaining Program. Information to be collected and analyzed includes but is not limited to:

- Number of potential Participating Employers.
- Number of potential Enrollees.
- Projected Enrollee participation rate.
- Transactional costs.
- Demographic information of potential Program participants.
- Employee views concerning investment options, risk tolerance, and distribution options.
- Concerns and interests associated with the Program.

The study shall also include a financial model that simulates outcomes based on several variables including Program participation rates, contribution rates, auto-escalation options, and start-up and operating costs will also be provided to the Board.

7) Travel

- Should travel be necessary during the term of the awarded contract, OST will reimburse the Consultant for mutually agreed upon travel related expenses. These expenses must be approved by OST or the Board prior to the Consultant booking any travel. Consultant will not be required to engage in any travel unless OST provides reimbursement of reasonable expenses associated with such travel.

APPENDIX B: 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 EARNs Program Board (the “Board”), and [_____] (“Consultant”).

WHEREAS, on December 5, 2022, OST, on behalf of the Board, issued a formal Request for Proposals (the “RFP”) pursuant to the State Procurement Code seeking proposals from qualified firms to provide consulting services to OST, the Board and its committees relating to the Delaware Expanding Access to Necessary & Retirement Savings (EARNs) program (the “Program”);

WHEREAS, OST and the Board desire to obtain from Consultant the consulting services as set out in the Statement of Work attached hereto as **Exhibit 1**;

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

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

1. Services and Term.

- 1.1. Consultant shall provide to OST, the Board and committees those services as set forth herein and as specified on the Statement of Work attached hereto as **Exhibit 1** (collectively, the “Services”). Consultant 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 two (2) years from that date. OST has four (4) 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. Consultant shall meet and confer with OST, the Board and/or any committee of the Board at such times and places as OST, the Board or a committee may reasonably request. Consultant, if requested by OST, shall participate in meetings with other State agencies concerning Program-related issues. Consultant 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 Consultant for the performance of Services in accordance with **Exhibit 2**.
- 2.2. OST's obligation to pay Consultant for the performance of Services will not exceed the annual fixed price set forth on **Exhibit 2**. Consultant 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 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 Consultant's identified address on record with OST.
- 2.4. Consultant 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 Consultant 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 Consultant's responsibility. Consultant shall not be reimbursed for any expenses incurred by Consultant 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 Consultant as a consequence of this Agreement.
- 2.7. OST shall have the right to setoff or subtract from any payment to be made to Consultant all damages, costs and expenses caused by Consultant's breach of the Agreement, or Consultant'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 Consultant.
- 2.8. Invoices shall be submitted electronically to EARNS@delaware.gov.

3. [Reserved.]

4. Responsibilities of Consultant.

- 4.1. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services. In performing the Services, Consultant 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. Consultant 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, Consultant shall, at its expense and option either (a) replace it with a conforming equivalent or (b) modify it to conform to DTI standards. Consultant 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 Consultant's failure to comply with DTI standards and requirements.
- 4.3. [Reserved.]
- 4.4. It shall be Consultant's duty to assure that Consultant does not compromise the security, confidentiality, or integrity of information owned or maintained by the State. In providing Services, Consultant 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. Consultant 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. Consultant 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 Consultant 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 Consultant 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. Consultant will not provide access to software, or produce work product, that violates or infringes on any copyright, trademark, patent or other intellectual property rights. Consultant 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 Consultant'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 Consultant shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages caused by Consultant's breach or negligent performance or failure to perform under this Agreement.
- 4.12. Consultant 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 Consultant is unsuitable for good cause, Consultant 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, Consultant shall promptly notify OST in writing of any investigation, examination or other proceeding involving Consultant, or any key personnel or designated staff of Consultant, 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. Consultant 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. Consultant has or will retain such employees as it may need to perform the Services.
- 4.19. Consultant 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. Consultant represents that it is properly licensed, registered and authorized to transact business and perform Services in the State.
- 4.21. Consultant will provide to OST audited or unaudited financial statements, as requested by OST.
- 4.22. Consultant 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 Consultant in the performance of Services and will be available for consultation with Consultant 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 Consultant 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 Consultant work product and data and documents electronically stored by Consultant. 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 Consultant's expense, be provided with copies of all data and documents electronically stored by Consultant 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.

- 7.2. Confidential Material shall be used by Consultant solely for purposes of executing its duties and obligations under the Agreement. Consultant may disclose Confidential Material only to those Consultant employees who have a need to access Confidential Material in the scope of their employment for Consultant, 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 Consultant to execute its duties and obligations under the Agreement. Except as contemplated by the Agreement, Consultant shall not store or aggregate in a data base or other electronic storage means any Confidential Material; provided, however, that Consultant 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. Consultant shall immediately notify OST in writing of Consultant's receipt of a court order, subpoena or discovery requests seeking or ordering the production, disclosure or inspection of any Confidential Material. Consultant 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, Consultant 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 Consultant 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 Consultant and without reliance upon Confidential Material.
- 7.6. Consultant 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. Consultant 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, Consultant 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, Consultant may, subject to Consultant'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 Consultant'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 Consultant.
- 7.10. Consultant understands and agrees that the State may suffer irreparable harm in the event that Consultant fails to comply with its obligations hereunder and that monetary damages may not be adequate to compensate the State for such breach. Consultant 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. Consultant's confidentiality obligations shall survive termination of the Agreement.

8. Warranty.

- 8.1. Consultant 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 Consultant in connection with the provision of the Services, if any, Consultant shall pass through or assign to the State all rights Consultant obtains from the manufacturers and/or Consultants 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. Consultant 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 Consultant’s breach of the Agreement, or the negligent, reckless, intentional or other tortious, fraudulent, illegal, or unlawful conduct of Consultant 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 Consultant in writing of a Claim against an Indemnified Party, including, without limitation, any Claim based on Consultant’s disclosure of or failure to safeguard any personal financial or other Confidential Material, Consultant will defend such Claim at Consultant’s expense if so requested by OST, in OST’s sole discretion. Consultant 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 Consultant 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 Consultant, 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 Consultant shall have the right to seek to enforce this Agreement in the courts of this State.

10. Insurance.

- 10.1. Consultant 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 – Consultant 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). Consultant 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, Consultant 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. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Consultant in the performance of the Services; provided, however, that Consultant will, subject to scheduling and staffing considerations, attempt to honor OST's request for specific individuals.
- 11.3. Consultant 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 Consultant'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. Consultant acknowledges that Consultant and any agents or employees employed or contracted by Consultant 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. Consultant shall be responsible for providing liability insurance for its personnel and agents.
- 11.6. As an independent contractor, Consultant 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 Consultant under this Agreement for such period of time as OST, in its discretion, may prescribe by providing written notice to Consultant. Upon receipt of such notice, Consultant shall not perform further work under this Agreement until Consultant's receipt of written notice from OST to resume performance.
- 12.2. OST shall pay Consultant 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 Consultant.

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 Consultant is given 30 calendar days' written notice of intent to terminate.
- 13.3. If termination is effected, OST will pay Consultant 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 Consultant 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 Consultant ceases conducting business, OST shall have the right to make an unsolicited offer of employment to any officers or employees of Consultant.
- 13.4. In connection with any notice issued under this Section 13, OST may immediately retain another Consultant to perform the Services. Consultant 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 Consultant or Consultants. Consultant's obligation to provide transition services shall survive termination and shall continue until such date as is communicated in writing to Consultant that such Services or additional services are no longer needed.
- 13.5. If after termination for breach it is determined that Consultant 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 Consultant, terminate this Agreement without liability if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Consultant or any agent or representative of Consultant 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 Consultant it could pursue in the event of a breach of this Agreement by Consultant.
- 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 Consultant to assign or otherwise transfer any interest in this Agreement without the prior written consent of OST shall be void.
- 14.2. Consultant's employees shall perform all Services, unless OST consents in writing to Consultant'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 Consultant 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. Consultant 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 Consultant pursuant to **Exhibit 2** shall not be affected by OST's approval of Consultant'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 Consultant 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 Consultant through participation in the RFP process, including, without limitation, all written representations made by Consultant in Consultant's proposal concerning Consultant'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, Consultant 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. Consultant 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. Consultant 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. Consultant acknowledges that OST, the Board and the State have obligations to ensure that public funds and resources are not used to subsidize private discrimination. Consultant 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 Consultant 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. Consultant 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 Consultant, OST will, to the extent reasonably practicable, give Consultant 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 Consultant except to the extent the terms of the RFP Documents conflict or are inconsistent 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, Consultant hereby grants, conveys, sells, assigns and transfers to the State all of Consultant'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. Consultant 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: Matthew Rosen
Senior Policy Advisor (“Designated Contact”)
Office of the State Treasurer
820 Silver Lake Blvd., Suite 100
Dover, DE 19904

If to Consultant:

Attn:

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

**OFFICE OF THE STATE TREASURER, on behalf
of the EARNS PROGRAM BOARD**

Signature

Name

Title

Date

[CONSULTANT]

Signature

Name

Title

Date

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

- **Exhibit 1 – Statement of Work**
- **Exhibit 2 – Fee Structure**
- **Exhibit 3 – Project Schedule**

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

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

Exhibit 3 – Project Schedule

(to be negotiated)

APPENDIX C: Authorizing Legislation

LAWS OF DELAWARE
VOLUME 83
CHAPTER 405
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 205
AS AMENDED BY
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE RELATING TO ESTABLISHMENT AND MANAGEMENT OF THE EXPANDING ACCESS FOR RETIREMENT AND NECESSARY SAVING PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

WHEREAS, workplace retirement saving plans provide millions of U.S. workers with an effective and convenient way to save for retirement, yet one third of U.S. workers lack access to such plans; and

WHEREAS, according to research from the National Institute on Retirement Security, 75% of U.S. residents agree that the country is facing a retirement crisis; and

WHEREAS, an increasing number of states are offering or planning to offer workers whose employers do not sponsor a retirement plan an option to be automatically enrolled in private-sector payroll deduction IRAs, and many other states are considering such programs; and

WHEREAS, according to the National Compensation and Benefits Survey, which surveyed Delaware workplaces and their employees, 54% of employers within the State do not offer retirement plans; and

WHEREAS, according to research from the Georgetown University Center for Retirement Initiatives, approximately 38% of the State's workforce – more than 145,000 workers, many of whom are lower- to moderate-income women and minority workers – do not have access to employer-sponsored retirement plans; and

WHEREAS, despite the economic downturn caused by the COVID-19 pandemic, state-sponsored retirement plans that support small business employees have remained resilient with employee contributions holding steady, withdrawals under control, and employer registrations increasing; and

WHEREAS, in the three states with the longest-running state-sponsored retirement programs, employee contributions held steady or increased during the COVID-19 pandemic; and

WHEREAS, according to a March 2020 survey by MoneyRates, 36% of employees who are within 20 years of retirement expect the COVID-19 pandemic to delay their retirement; and

WHEREAS, according to an April 2021 Congressional Research Service report, the number of citizens over the age of 65 living in poverty in the State is projected to increase substantially over the next 20 years, with a commensurate increase in demand for public assistance benefits; and

WHEREAS, through the Delaware EARNs Program, the State will facilitate increased retirement saving among the State's working population and reduce the need for additional taxes or fees to fund public assistance programs; and

WHEREAS, the Delaware EARNs Program will provide a convenient, low-cost, portable, and tax-favored means of saving for workers whose employers do not offer a private-sector 401(k) or other employer-sponsored retirement plan.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 19 of the Delaware Code by inserting a new "Part V" as Chapter 37 by making insertions as shown by underline as follows:

Chapter 37. Delaware Expanding Access for Retirement and Necessary Saving Program.

§ 3701. Establishment; purposes.

There is hereby established the Expanding Access for Retirement and Necessary Saving ("EARNs") Program to serve as a vehicle through which covered employees may, on a voluntary basis, provide for additional retirement security through a State-facilitated retirement saving program in a convenient, cost effective, and portable manner. The Program is designed as a public-private partnership that will encourage, not replace or compete with, employer-sponsored retirement plans.

§ 3702. Definitions.

For purposes of this chapter:

(1) "Board" means the Delaware EARNs Program Board established under § 3703 of this title.

(2) "Covered employee" means an individual who is employed by a covered employer, and who has wages or other compensation allocable to the State. The Board may limit through regulation eligibility for specific categories of employees in order to avoid creating accounts that could increase administrative or management fees associated with available investment options. Covered employee does not include:

a. Any individual who is an employee of the federal government, the State or any other state, any county or municipal corporation, or any of the State's or any other state's agencies or instrumentalities.

b. Any employee covered under the federal Railway Labor Act.

c. Any employee on whose behalf an employer makes contributions to a Taft-Hartley multiemployer pension plan.

d. Any employee who is ineligible for covered employee status under regulations promulgated by the Board.

e. Any employee under the age of 18.

(3) "Covered employer" means any person, partnership, limited liability company, corporation, or other entity engaged in a business, industry, profession, trade, or other enterprise in the State, including a nonprofit entity, that employs, and during the previous calendar year employed, at least 5 covered employees, and that has been in business in this State for at least 6 months in the immediately preceding calendar year. Covered employer does not include:

a. The federal government, the State, any other state, any county, any municipal corporation, or any of the State's or another state's agencies or instrumentalities.

b. Any employer that maintains a specified tax-favored retirement plan.

(4) "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended.

(5) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, or any successor law, in effect for the calendar year.

(6) "IRA" means a traditional or Roth individual retirement account or individual retirement annuity described in §408(a), 408(b), or 408A of the Internal Revenue Code .

(7) "Participant" means any individual who is contributing to, or has a balance credited to, an IRA under the Program.

(8) "Participating employer" means a covered employer that makes the Program available to its employees through payroll deduction IRA arrangements under this chapter.

(9) "Payroll deduction IRA arrangement" means an arrangement by which a participating employer makes payroll deductions authorized by this chapter and remits the amounts deducted as contributions to IRAs on behalf of participants.

(10) "Plans Management Board" means the Board established by § 2722 of Title 29 to manage specified plans and programs created under the laws of this State.

(11) "Program" means the EARNS Program established by this chapter. Except as otherwise specified, references to the Program throughout this chapter also means the trust, including trust assets, facilities, costs and expenses, receipts, expenditures, activities, operations, administration, and management.

(12) "Program expenses" means all fees, costs, and expenses of the State related to the Program, including administrative expenses, investment expenses, consulting fees, accounting costs, auditing costs, legal fees and costs, marketing expenses, education expenses, and other miscellaneous costs incurred in the implementation and continuation of the Program.

(13) "Roth IRA" means an IRA described in §408A of the Internal Revenue Code.

(14) "Specified tax-favored retirement plan" means a retirement plan that is an automatic enrollment payroll deduction IRA applicable to all covered employees and meeting all other qualifications that may be established by the Board, or a retirement plan qualified under, or described in, and in compliance with §§ 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code.

(15) "Traditional IRA" means an IRA described in §408(a) or (b) of the Internal Revenue Code.

(16) "Trust" means the trust in which assets of the Program are to be held, including contributions and investment earnings.

(17) "Wages" means any commission, compensation, salary or other remuneration, as defined by §219(f)(1) of the Internal Revenue Code received by a participant from a participating employer.

§ 3703. The Delaware EARNs Program Board ; establishment; purpose.

(a) The Delaware EARNs Program Board is hereby established . The Board shall oversee the design, implementation and initial administration of the Program in accordance with this chapter.

(b) The Board shall consist of 7 members comprised of the following:

(1) 4 members shall serve by virtue of their office, each of whom may designate a person to serve in their stead and at their pleasure:

a. The State Treasurer.

b. The Secretary of Finance.

c. The Insurance Commissioner.

d. The Secretary of Labor.

(2) 1 member who is the chairperson of the Plans Management Board, who may designate a member of the Plans Management Board or one of its committees to serve in the chairperson's stead and at the pleasure of the chairperson.

(3) 2 public members appointed by the Governor who, by reason of education or experience, are qualified to serve. One public member must be an owner of a small business in the State. The other public member must have experience in providing financial advice or assistance to lower- to moderate-income workers or retirees. Public members' initial term shall be for 2 years, subject to earlier termination upon dissolution of the Board as provided in this chapter.

(c) Board voting, governance and meetings.

(1) Each Board member shall have 1 vote. The powers of the Board shall be exercised by a majority of all members present at a meeting of the Board, whether in person or remotely. Four members shall constitute the necessary quorum to convene a meeting of the Board and to act on any measure before it.

(2) The Governor shall appoint a Board chairperson from between the public members. The chairperson as such shall serve at the pleasure of the Governor.

(3) The Board shall meet at a minimum of 4 times annually. The Board Chairperson and the State Treasurer are authorized to call and set the agenda for special meetings of the Board.

(4) The Board and its committees may conduct meetings remotely by teleconference or videoconference, including in order to obtain a quorum and to take votes on any measure.

(5) Meetings and documents relating to investment strategy or negotiations concerning investment of Program money shall be exempt from Chapter 100 of Title 29.

(d) Standard of care.

(1) The Board, its committees, and each of their members shall discharge their duties with respect to the Program solely in the interest of the participants and beneficiaries of the Program and for the exclusive purpose of providing Program benefits to participants and their beneficiaries, including defraying reasonable expenses in administering the Program and in accordance with the trust and other program documents and applicable law.

(2) When investing, managing, or using trust assets, the Board, its committees, and each of the members shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the Program.

(e) Powers and duties.

(1) The Board shall establish, design, develop, implement, maintain, and oversee the Program in accordance with best practices for retirement saving vehicles.

(2) The Board shall, through employer and employee outreach, marketing or education initiatives, or publication of online resources, encourage participation, retirement saving and sound investment practices. The Board shall provide or make available information regarding the Program, including its applicability and registration requirements, with special emphasis on participation eligibility and the ability of employers at any time to sponsor a specified tax-favored retirement plan that would exempt them from covered employer status.

(3) The Board shall adopt rules or regulations to govern the Program, including rules or regulations governing the following:

a. Employee eligibility and covered employer status.

b. Enrollment and re-enrollment processes.

c. The methods by which covered employees or participants may make and change elections.

d. The means by which covered employees or participants may opt out of participation.

e. Contribution limits, the initial automatic default contribution rate, the automatic annual default escalation rate and the maximum default contribution rate.

The Board may adopt rules or regulations allowing employers that are exempt under this chapter to voluntarily participate in the Program and extending eligibility to participate in the Program to individuals who are not employees, including unemployed individuals, self-employed individuals and other independent contractors.

(4) The Board is authorized to charge and collect reasonable administrative fees from participants and use such fees, as well as appropriations and other funds dedicated to supporting the Program, to defray reasonable program expenses.

(5) The Board may establish committees. Committee membership may include persons who are not members of the full board.

(6) Subject to applicable procurement requirements, the Board may enter into contracts, agreements, or arrangements for goods and services necessary or desirable for carrying out the purposes of this chapter, including recordkeeping, administrative, consulting, accounting, legal, asset management, and investment advisory services to assist in establishing, maintaining, administering, operating, and implementing the Program. The Board may discuss the opportunity for qualified minority-, woman-, veteran-, and disabled-owned financial firms, or firms with a record of equity, diversity and inclusion within the firm, as a provider of investment advisory services.

(7) The Board may effect this chapter's purpose by creating or entering into, on behalf of the Program, a consortium, alliance, joint venture, partnership, compact, or contract with another state or states or their programs or boards, which may modify the Board's duties under this chapter.

(8) The Board shall establish the trust. The trust shall include a participant fund that shall hold all participant IRA asserts and earnings and an administrative fund that shall hold all fees collected from participants, all administrative penalties recovered under this chapter, and other amounts received from other funding sources, other than appropriations and earnings thereon. Participant contributions shall be allocated to the participant fund and combined solely for investment purposes. Each participant shall own the contributions to and earnings on the participant's account. Program expenses shall be paid from the administrative fund or appropriations. Trust assets shall not be transferred or used by the Board for any purpose not expressly authorized by this chapter and shall not be commingled with State or non-program funds.

(9) The Board shall adopt an investment policy statement and select investment options, including default investment options, consistent with the objectives of the Program. The menu of investment options may encompass a range of risk and return opportunities and shall be determined taking into account the following:

a. The nature and objectives of the Program.

b. The diverse needs of participants.

c. The desirability of limiting investment choices under the Program to a reasonable number.

d. The extensive investment choices available to participants if program accounts roll over to an IRA outside of the Program.

(10) The Board shall ensure that the Program is designed and operated in a manner that will not cause it to be subject to or preempted by ERISA.

(11) The Board shall ensure that the Program is designed and operated to:

a. Minimize costs to participants, employers and the Program.

b. Minimize the risk that covered employees will exceed applicable annual contribution limits.

c. Minimize any need for employers that are not covered employers to register with the Program.

d. Facilitate and encourage employer and employee participation in the Program and participant saving.

e. Provide resources to any employer that, as an alternative to the Program, may be interested in adopting a privately offered tax-favored retirement plan for its employees.

f. Maximize simplicity, including ease of administration for participating employers and ease of use for participants.

g. Maximize portability of participant accounts.

h. Maximize financial security in retirement.

(12) The Board may arrange for collective, common, and pooled investment of assets of the Program, including investments in conjunction with other funds with which Program assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale.

(13) The Board shall arrange for and facilitate compliance with all requirements applicable to the Program under the Internal Revenue Code, including requirements for favorable tax treatment of IRAs, and any other applicable law or regulation.

(14) The Board may accept on behalf of the Program any grants, gifts, appropriation, and other money from any person, governmental, or other entity to defray the costs of administering and operating the Program.

(15) The Board may implement the Program in stages, which may include phasing in the Program based on the size of employers, or other factors. To the extent practicable, the Board shall implement the Program so that covered employees can begin to participate and make contributions by January 1, 2025.

(16) The Board shall approve the annual administrative budget for the Program and oversee the collection and disbursement of money in the administrative fund.

(17) The Board, in the exercise of its sole discretion, and without liability, may remove program funds from any financial institution or investment vehicle at any time, provided that such funds shall at all times remain in the trust and be transferred promptly to an alternative financial institution or investment vehicle under the Program.

(18) The Board shall arrange for an annual financial audit of the Program by an outside auditor which shall be provided to the General Assembly. Notwithstanding § 2906(c) of Title 29, the Board shall have exclusive authority to select and contract with a certified public accounting firm to conduct the audits. Payment for any audit must be approved by the Board.

(19) The Board may enter into intergovernmental agreements or memoranda of understanding with the State and any agency or instrumentality of the State in order to further the successful implementation and operation of the Program through the provision, receipt, or other sharing of data, technical assistance, enforcement, compliance, collection, and other services or assistance to the Program, and all such agencies and instrumentalities shall cooperate with the Board in achieving those ends.

(20) The Board may establish a needs-based small business support grant program for covered employers who require payroll software or similar products or support to implement the Program. The grant program may be funded by appropriations or administrative fees. The grant program shall be subject to the annual administrative budget process. The Board shall prescribe rules and promulgate regulations governing eligibility for grant recipients, the grant application process, and terms and conditions for any award. The Board shall be responsible for providing oversight for the grant program. The Office of the State Treasurer shall administer the grant program and shall report to the Board regarding grant program operations when requested to do so by the Board.

(f) Compensation; exculpation; indemnification.

(1) Members may not receive compensation for serving on the board or its committees. Except for ex officio members, all members are entitled to reimbursement by the State for travel and other expenses incurred in attending meetings of the Board or a committee. A State employee appointed to the Board is permitted to count the time spent attending or traveling to and from Board meetings or Board committees, as part of the employee's regular work day and shall not be required to use leave time.

(2) Each Board and committee member is entitled to immunity under the provisions of Chapter 40 of Title 10 for civil liability resulting from acts or omissions arising out of and in connection with discretionary actions undertaken as a function of a member's responsibilities under this chapter if that member acted in good faith and in a manner the member reasonably believed to be in the best interest of the State, and without gross or wanton negligence.

a. A Board or a committee member is not personally liable for any act or omission made during the member's tenure, or for any loss incurred by any person as a result of participation in the Program.

b. The State shall indemnify each Board or committee member who is a party to or is threatened to be made a party to any potential, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, arising by reason of such member's participation on the Board or a committee, for any expenses, judgments, fines, costs, and amounts paid in settlement if actually and reasonably incurred in defending against the action, suit or proceeding. Indemnification is conditioned on the member having acted in good faith and in a manner the member reasonably believed to be in the best interest of the State. With respect to indemnification for a criminal matter, the member must also have had no reasonable cause to believe the member's conduct was unlawful.

c. In the event that the Attorney General is precluded from providing legal representation to a member under § 2504(3) of Title 29, the State shall indemnify a member for reasonable and actual attorney fees and disbursements a member incurs in defending against the action, suit or proceeding.

d. Any expenses incurred by a Board or committee member in defending a civil, administrative, or investigative action, suit, or proceeding arising as a result of the member's activities as a member of the Board may be paid by the State in advance of the final disposition of the action, suit, or proceeding on authorization by a majority of the members of the Board and by the Governor.

(g) The Board and its committees shall receive administrative support from the Office of the State Treasurer. The Office of the State Treasurer is authorized to and shall initiate and manage all procurement and regulatory processes related to the Program and carry out such other program-related functions as may be delegated by the Board.

(h) Unless terminated earlier as provided in this subsection, the Board shall disband and cease to exist, effective as of December 31, 2025, at which point all duties and functions of the Board under this chapter shall be transferred to and assumed by the Plans Management Board. At any time after full implementation of the Program, the Board, by majority vote, may disband and transfer no less than all of its duties and authority under this chapter to the Plans Management Board provided that the Plans Management Board, by majority vote, agrees to assume all such duties and authority prior to December 31, 2025.

§ 3704. The Program.

The Program shall have such features as the Board in its discretion may adopt, subject to applicable federal law, and the following mandatory provisions:

(1) Each participant may have only 1 account with the Program, and all participating employers shall promptly remit the participant's contributions under the Program to that account.

(2) Employers and non-participants may not contribute funds to Program accounts.

(3) Employers shall not be fiduciaries with respect to, or be liable for, program design, program-related information, educational materials, or forms or disclosures approved by the Board, or the selection or performance of vendors selected by the Board. No employer, the State or any agency or instrumentality of the State, the Program, its administrator or personnel, shall be responsible for, or obligated to monitor a covered employee's or participant's decision to participate in or opt out of the Program, or for contribution decisions, investment decisions, or failure to comply with the statutory eligibility conditions or limits on IRA contributions. No employer shall guarantee any investment, rate of return, or interest on assets in any participant account or the administrative fund or be liable for any market losses, failure to realize gains, or any other adverse consequences, including the loss of favorable tax treatment or public assistance benefits, incurred by any person as a result of participating in the Program. Nothing in this subsection shall relieve an employer from liability for criminal, fraudulent, tortious or otherwise actionable conduct, including liability related to the failure to remit employee contributions.

(4) When and as required by the Board, covered employers shall:

a. Register with the Program and provide the Program administrator relevant information about the employer's employees .

b. Offer or assist the Program in offering all covered employees the choice to either participate in the Program by voluntarily contributing to an IRA under the Program or opt out of the Program.

c. Provide or assist the Program administrator in providing program-related information, educational materials, and disclosures to covered employees and participants.

d. Timely remit participant contributions.

e. Perform any other duties or functions the Board may require to facilitate enrollment and administration of the Program.

(5) Covered employees who do not opt out shall be automatically enrolled in the Program at the default rate specified by the Board or at the rate or amount expressly specified by an employee in connection with the payroll deduction IRA arrangements . Participants shall have the right to modify their contribution rates or amounts, or terminate their participation in the Program at any time, subject to such rules as may be adopted by the Board.

(6) The initial automatic default contribution rate shall be established by the Board in its discretion.

a. The automatic default contribution rate may be changed by the Board from time to time. It shall not be less than 3% or more than 6% of compensation.

b. The Board may determine in its discretion to increase the automatic default contribution rate for all participants based on their years of participation, provided that such increases shall be either 1% or 2% of compensation and shall not occur more frequently than annually.

c. The maximum default contribution rate established by the Board shall not exceed 15%.

d. The initial or subsequent default contribution rates shall apply to all participants who do not affirmatively select a different initial or subsequent contribution rate, or who do not affirmatively opt out of automatic contribution rate increases.

e. All contribution rates are subject to the dollar limits on contributions provided by law.

(7) Except as otherwise provided in this chapter, all IRAs established under the Program shall be Roth IRAs. The Board may authorize participants to utilize traditional IRAs in connection with the Program and allocate contributions between Roth and traditional IRAs, subject in all cases to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code. If the Board authorizes participants to maintain both Roth and traditional IRAs, each shall be deemed to be a sub-account of the participant's single account under the Program consistent with § 3704(1) of this title.

(8) Contributions shall be invested in the default investment option unless the participant affirmatively elects to invest some or all balances in one or more approved investment options offered by the Program. A participant shall have the opportunity to change investments for future contributions or existing balances or both, subject to rules adopted by the Board.

(9) A participant's total annual contributions under the Program shall be subject to the limits established under federal law.

(10) A participant's contributions and earnings thereon shall be held in the trust and combined for investment purposes only. Separate records and accounting shall be required for each account. Reports on the status of each participant's account must be provided to each participant at least annually. Participants must have online access to their accounts.

(11) A participant's account shall be portable with respect to any covered or participating employer. A former participant who is either unemployed, or who is employed by a non-covered employer, shall be permitted to contribute to accounts outside of the Program. A participant shall be entitled to maintain an account within the Program regardless of place of employment or to roll over or transfer balances into other IRAs or other retirement plans or accounts that accept such rollovers or transfers.

(12) A participant's and former participant's ability to withdraw or roll over or transfer account balances is subject to all fees, penalties, and taxes under applicable law.

(13) A participant's and former participant's ability to receive distributions of contributions and earnings is subject to applicable law.

(14) Information relating to accounts under the Program, including personally identifiable information, is confidential and shall be maintained as confidential except to the extent disclosure is necessary to administer the Program, authorized by the participant in writing, or permissible or required under other applicable law, regulation, or order.

§ 3705. Compliance.

(a) The Board shall have exclusive authority to ensure compliance with and enforce this chapter or any regulation promulgated under this chapter.

(b) The Board shall establish a process for the submission of employee complaints concerning a covered employer's alleged failure to comply with this chapter. All complaints concerning a covered employer's compliance with this chapter received by any other State agency shall be referred to the Board. The Board may, with or without a complaint, monitor the status of covered employers' compliance with this chapter, including through review of available data and documents.

(c) If the Board determines that a covered employer is not in compliance with this chapter or regulations issued hereunder, the Board shall issue a notice to the employer outlining the nature and extent of the alleged noncompliance, providing instructions for compliance, and specifying the potential administrative penalties for noncompliance.

(d) If the employer does not come into compliance within 90 days of the date the notice was issued, the Board, in its discretion, may initiate enforcement proceedings under Subchapter III, Chapter 101 of Title 29. The Board shall not initiate enforcement proceedings against a covered employer until one year after the date on which the employer is required to comply with this chapter for the first time.

(e) The Board may, in a final order, impose administrative penalties against a covered employer who fails to comply with this chapter or any regulation promulgated under this chapter, which penalties shall not exceed \$250 per employee per year, up to a maximum total penalty of \$5,000 per year.

Section 2. Amend § 2722 of Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2722. Plans Management Board.

(a) Establishment; purposes. – ~~There is hereby established the Plans Management Board (the “Board”).~~ The Plans Management Board is established. The Board’s purpose ~~shall be~~ is to administer the Delaware College Investment Plan established pursuant to subchapter XII, Chapter 34 of Title 14, the Delaware Achieving a Better Life Experience Program established pursuant to Chapter 96A of Title 16, ~~and~~ the Deferred Compensation Program established pursuant to Chapter 60A of this ~~title~~ title, and the Expanding Access for Retirement and Necessary Saving Program (EARNs) established pursuant to Chapter 37 of Title 19 (collectively, “the Plans”), in each case, in accordance with the individual purposes of each of the Plans.

(d) Standard of care. – (1) With respect to the Deferred Compensation Program, and the EARNs Program, (Program) (Programs) the Board, its subcommittees, and each of their members shall discharge their duties with respect to the ~~Program~~ Programs solely in the interest of the participants and beneficiaries of the ~~Program~~ Programs and for the exclusive purpose of providing ~~Program~~ Programs benefits to the participants and their beneficiaries, including defraying reasonable expenses of administering the ~~Program, Programs,~~ with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the ~~Program~~ Programs .

(e) Powers and Duties of Board. –

(9) Assume the powers and duties of the Delaware EARNs Program Board established under Chapter 37 of Title 19.

Section 3. Section 1 of this Act takes effect following the date of publication in the Register of Regulations of a notice submitted by the State Treasurer that funding necessary to implement the Program, as reflected in the fiscal note, has been received from the General Assembly or other sources.

Section 4. Sections 2 of this Act takes effect on December 31, 2025 or upon the date the EARNs Program Board disbands and transfers all of its duties and authorities to the Plans Management Board, whichever is first to occur. In the event that the Plans Management Board, by majority vote, agrees to assume all the duties and authority granted to the EARNs Program Board, it shall publish notice to that effect in the Register of Regulations.

Approved August 18, 2022

