

ATTACHMENT 3: Exception Form

CONTRACT NUMBER: TRE-CPM-21101 - DEFERRED COMPENSATION PLAN RECORDKEEPING AND ADMINISTRATIVE SERVICES

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

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

Paragraph # and page #	Exceptions to specifications, terms or conditions	Proposed Alternative
III. Scope of Services (minimum eligibility requirements) IV.10 Page 8	Regarding complying with all Delaware Department of Technology and information (DTI) security requirements, protecting data is important to Empower, and we maintain a robust enterprise-wide security program. We may not utilize exactly all of the specific technology and information security standards noted herein, but we use something comparable and potentially of a higher standard.	IV.10 (pg. 8) – The Vendor must be able to comply with all Delaware Department of Technology information security requirements, or Vendor's industry-standard equivalent , for securing participants account information and handling of contribution and eligibility feeds from various payroll systems, including PeopleSoft and ADP.
Attachment 9.A.1. Page 48	Empower agrees to maintain technical, procedural and administrative security measures consistent with the standards described in the Empower Data Security & Privacy Addendum submitted with this RFP. We welcome the opportunity to do a deep dive with OST and the Board to further discuss your security needs and our security program.	9A1 (pg. 48) – The awarded vendor shall, at a minimum, comply with all Delaware Department of Technology (DTI) security standards identified in this Request for Proposal and any resultant contract(s), or Vendor's industry-standard equivalent .
Appendix B: PSA 4.2 Responsibilities of Vendor Page 64		4.2 (pg. 64) ... Vendor shall be liable and shall indemnify, defend and hold harmless the Indemnified Parties (as defined below) for all direct suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by an Indemnified Party resulting from or attributable to Vendor's failure to comply with this Section

		4.2DTI standards and requirements, including those set forth on Exhibits 4-6.
B.9. Submission of Proposals – Sub-Contracting Page 14	Regarding subcontractors, Empower cannot passthrough plan sponsor-specific contract requirements to our vendors and suppliers. Empower can agree to endeavor to include substantively similar language of key provisions of the State’s PSA in agreements for subcontractors retained solely and uniquely for the State.	... All independent contractors and subcontractors must agree in writing to be bound by the terms of the PSA and other agreements and documents governing the relationship between the Vendor and the State. Vendor will endeavor to include substantively similar language of key provisions of the State’s PSA in Vendor’s contractors’ agreements retained solely and uniquely for the State.
Appendix B: 13 Assignment; Subcontracts Page 73	Empower can agree to confer with the State for contractors and subcontractors retained solely and uniquely for the State to perform services under the Agreement.	13.2 Vendor’s employees shall perform all Services, unless OST contents in writing to Vendor’s request to use temporary staff, independent contractors or a subcontractor <u>retained solely and uniquely for the State to perform Services under the Agreement.</u>
Attachment 9. C.1. Pages 49-51	Regarding Vendor responsibilities in the event of a data breach, Empower understands that time is of the essence and agrees to take appropriate actions as soon as administratively practicable. Empower also agrees to cooperate with the State as mutually agreed as to corrective actions.	<p>1.1 (pg. 50) Should the State of Delaware or the awarded vendor determine that a data breach has actually occurred; the awarded vendor will immediately timely take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by VENDOR, DTI, AND GSS.</p> <p>1.2 (pg. 50) Should any corrective action resultant from Section B.1.1 above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall be as mutually agreed by the parties.</p> <p>1.3 (pg. 50) In the event of an</p>

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<p>Exhibit 5: Cloud Services Terms and Conditions Agreement Page 84</p>		<p>emergency the awarded vendor may take reasonable corrective action to address the emergency. In such instances the corrective action will be considered final when mutually agreed by DTI and Vendor.</p> <p>1.4.2 (pg. 50) Provide a preliminary written report summarizing the nature, extent, and root cause of any such data breach as soon as administratively practicable.</p> <p>1.4.4 (pg. 51) To the extent the data breach is caused by Vendor's failure to abide by its data security obligations, Vendor will bear Bear all reasonable costs associated with the investigation, response and recovery from the breach, such as add the 3-year 1-year credit monitoring services, mailing costs, website, and toll-free telephone call center services.</p> <p>Breach Notification and Recovery: Vendor must notify the State immediately promptly of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State data.</p> <p>This includes, but is not limited to, credit monitoring services with a term of at least three (3) one (1) year, mailing costs, website, and toll-free telephone call center services. Except as provided in this Agreement, the State shall not agree to any limitation on liability that relieves Vendor or any person or entity from responsibility for its own negligence or conduct, or to the extent that it creates an obligation on the part of the State to hold any person or entity harmless.</p>
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Appendix A: Scope of Services		
Appendix A: Communication/ Education Services, A. 1. b.iii. 2. Page 58	A potential annual benefits statement incorporating aspects of the Deferred Compensation and Defined Benefit plans as well as Social Security estimate that indicates a shortfall in retirement savings and the impact of increasing deferrals on reducing that shortfall.	While we are not printing an annual benefit statement, this information is available daily on our website. This information is utilized by our retirement plan advisors with your participants to improve overall plan health.
Appendix A: c. ii. Compliance Page 59	i. Distribution of Form 1099 for all withdrawals	Empower provides 1099 for the DC plans and ADMIN Partners will coordinate with the legacy providers.
Appendix A: d. vi. Investment Management Services, Page 59	i. Ability to handle custom target date and other custom portfolios if desired by OST	Empower has this ability. Any unitized funds would have an additional cost.
Appendix B: PSA 1.1 Page 62	Regarding fiduciary status, Empower is a non-discretionary, directed recordkeeper. If Great-West Trust Company were to provide trustee and/or custodian services to the State, it would be subject to a separate agreement or schedule.	1.1 (pg. 62) Vendor shall provide the State with all necessary and appropriate transition, recordkeeping, trustee, custodian and administrative services for the Plans, including the services as set forth herein and/or as specified on Exhibit 1 (Statement of Work) to this PSA (collectively, "Services"). Vendor shall serve as a non -fiduciary, directed recordkeeper in connection with the provision of Services.
Appendix B: PSA 3. Performance Schedule Pages	Regarding Performance SLAs, Empower is providing alternative SLAs to those proposed.	Empower has provided the attached Performance Agreements that exceed the requested 10% with a 15% guarantee as well as \$90,000 in conversion guarantees. Please see updated document attached.
Appendix B: 1. Ownership of Work Product Pages 66-67	Regarding work product, Empower can create work product subject to a separate statement of work. Empower will not produce work product under this Agreement.	5.2 (pg. 67) Strike in its entirety. 5.3 (p. 67) The State shall retain title and interest to all data and documents provided by the State to Vendor related to the Services. Upon termination of the Agreement, and for a period of six (6) months thereafter, the Stateshall have access to all data and documents and related

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Exhibit 6: Data Usage Terms and Conditions Agreement Page 89	Regarding data ownership, each party will own its own materials, trademarks, trade names, logos, trade dress and other confidential information provided to or made accessible to the other party.	activity and other reports available in connection with the Services. Promptly after such six (6) month period, all State data and documents and related activity and other reports shall be retained and returned or destroyed in accordance with Section 6.8. Data Ownership: The State shall own all right, title and interest in its data provided by the State to Empower that is related to the Services. Vendor shall not access State user accounts, or State data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at OST or the State's written request. All information obtained or generated by Vendor in connection with the Agreement shall become and remain property of the State
Appendix B: 6. Page 68	Regarding discovery of security breaches, Empower will promptly notify the State of discovery of security breaches involving Confidential Material.	6.8 (pg. 68) Vendor shall immediately promptly 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.
Appendix B: Indemnification & Limitation of Liability Pages 69-70	Regarding Indemnification and Limitation of Liability, Empower agrees to indemnify the State against claims asserted by third parties to the extent caused by Empower's breach of the agreement or negligent, willful misconduct. Empower will not be liable for following the direction of the State or the State's authorized agents.	8.1 (pg. 69) Vendor shall indemnify, defend and hold harmless OST, the Board and the State and their respective officers, committees, members, agents and employees (the "Indemnified Parties") from any and all liability, suits, actions, claims or damages, together with all reasonable costs and expenses

		<p>(including attorneys' fees).<u>asserted by a third party, to the extent</u> arising out of Vendor's breach of the Agreement, or the negligent, reckless, intentional or other tortious, fraudulent, illegal, or unlawful conduct of Vendor or any subcontractor or independent contractor, or their respective officers, employees or agents, arising out of or related to the Agreement ("Claims"). <u>Notwithstanding anything to the contrary herein, Vendor shall not be liable to the State for any Damages resulting from: 1) any acts or omissions undertaken at the Direction of the State or any agent or any third party authorized by the State to provide Direction to Vendor, including but not limited to prior service providers, investment advisors, or any authorized agent thereof; or 2) any performance of the Services that is in strict compliance with the terms of this Agreement. The State acknowledges that Vendor and its directors, officers, employees and authorized representatives are not responsible for the investment performance of any Investment Options under the Plan.</u></p> <p>8.3 Neither OST, the Board, the State, nor any other department, agency or instrumentality thereof, nor any committee, officer, member, agent or employee of the foregoing, shall have any obligation to indemnify or hold harmless Vendor or any otherparty for fees (including attorneys' fees), expenses, suits, actions, claims or <u>direct</u> damages.</p> <p>8.4 <u>NOTWITHSTANDING ANYTHING TO THE CONTRARY</u></p>
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		<p><u>IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.</u></p>
Appendix B: 9. Insurance Pages 69-71	Regarding Insurance, Empower currently maintains insurance coverage which meets or exceeds the requirements with respect to performing services under a recordkeeping agreement. Empower reserves the right to self-insure any and all insurance and/or to modify such requirements in order to align with its current policies and coverage as set forth by Empower's insurance providers/brokers.	<p>9.1 Vendor shall maintain the following insurance during the term of the Agreement but reserves the right to self-insure any and all required insurance:</p> <ul style="list-style-type: none"> a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law; b. ComprehensiveCommercial General Liability—\$1,000,000 per occurrence/\$3,000,000 per aggregate; c. Professional Liability (also known as Errors and Omissions) - \$5,000,000 per occurrenceclaim/\$5,000,000 per aggregate; d. Miscellaneous Errors and Omissions \$1,000,000 per occurrence/\$3,000,000 per aggregate; e. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include butnot limited to

		<p>transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:</p> <ul style="list-style-type: none"> a. \$12,000,000 combined single limit each accident, for bodily injury and property damage; b. \$250,000 for property damage to others; c. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage; d. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 Del. C. § 2118 and e. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss. <p>And:</p> <ul style="list-style-type: none"> f. Excess/Umbrella policy – Excess/Umbrella \$10,000,000 total (sits above underlying worker's compensation and employer's liability, commercial general liability, professional liability, and business automotive liability). <p>9.2 In addition to the insurance policies required by Section 10.1, Vendor must maintain cybersecurity liability insurance coverage with limits of [in an amount TBD] for loss resulting from a data breach. The policy shall be issued by an insurance company with an A.M. BestRating of A-VII and shall remain in place for the term of the Agreement. Notwithstanding anything in Exhibit 5, Vendor shall immediately promptly notify OST when Vendor becomes aware of a security breach involving</p>
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		<p>State data.</p> <p>9.3 Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered to OST.</p> <p>9.4 Before any work is performed pursuant to the Agreement, the Certificate of Insurance and/or copies of the insurance policies specified in Sections 10.1 and 10.2 shall be provided to OST. Upon written request, Vendor will offer proof of insurance renewal or extension within 30 days following the expiration date of the policies required. Such certificate(s) shall suffice as evidence that required insurance is maintained. The certificate holder is as follows:</p>
Appendix B: 12 Termination Page 73	<p>Regarding termination for convenience, Empower requires mutual termination for convenience.</p> <p>Regarding compensation after the effective date of the termination, Empower will have expenses from activities performed after the termination of the agreement. Empower will provide transition assistance services in accordance with its Transition Assistance Services policy. Please see proposed alternative language in 12.3 and 12.4.</p>	<p>12.2 (pg. 73) The Agreement may be terminated in whole or in part by either party for its convenience, but only the other party is given sixty (60) calendar days' written notice of intent to terminate.</p> <p>12.3 (pg. 73) Vendor is entitled to compensation earned for Services provided as of the effective date of termination and through complete transition of Plans to a successor recordkeeper.</p> <p>12.4 (pg. 73) In connection with any notice issued under this Section 12. the State may immediately retain another vendor to perform the Services. Vendor shall at all times cooperate in the transition and shall, at no additional cost to the State for transition services, perform such reasonable services as OST or the Board shall determine are necessary or appropriate to enable the transition</p>

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		of work to a successor vendor or vendor <u>without undue burden to Vendor</u> . Vendor's obligation to provide transition services shall survive termination and shall continue <u>in accordance with Vendor's Transition Assistance Services schedule attached hereto</u> .
Appendix B: 15. Miscellaneous Provisions Page 75	Regarding modification of the agreement, it would be unduly burdensome and impractical to secure plan sponsors approvals to proceed with enterprise-wide changes and/or enhancements. Empower reserves the right to unilaterally amend the agreement to comply with applicable law, to add or enhance services, or to update the method of providing the services.	15.1 Neither this PSA, including its exhibits, nor the Agreement may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of the Agreement shall be effective unless it is in writing and signed by the party against whom enforcement is sought. <u>Notwithstanding the foregoing, Vendor may unilaterally amend the Agreement to the extent necessary to comply with applicable laws, to add or enhance the Services, or to update the method of providing the Services without any reduction in service, by providing written notice to the State at least 30 days in advance of the effective date of such change.</u>
Appendix C: Sample Program Audit Requirements	<p>5. The RFP indicates this is a single vendor arrangement. This requirement should not be applicable.</p> <p>11. These reports would come from BNY as the Plan's trustee/custodian. Empower's recordkeeping reports will show participant activity at the NAV level but will not be able to show individual activity to any underlying unitized investments.</p> <p>12. second bullet point regarding assets held in custody for the 403b plan, it is expected that BNY as the trustee/custodian would provide this to the State.</p> <p>14. It is expected that BNY as the custodian would provide this to the State, or alternatively, by the State's investment manager.</p>	

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	<p>16. It is expected that BNY as the custodian would provide this to the State.</p> <p>17. It is expected that BNY as the custodian would provide this to the State, or alternatively, by the State's investment manager.</p> <p>18. It is expected that BNY as the custodian would provide this to the State, or alternatively, by the State's investment manager.</p>	
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Note: Use additional pages as necessary.