

**MEMORANDUM OF UNDERSTANDING
BETWEEN AND AMONG
THE STATE OF DELAWARE OFFICE OF AUDITOR OF ACCOUNTS
AND
THE PLANS MANAGEMENT BOARD
AND
THE STATE OF DELAWARE OFFICE OF THE STATE TREASURER**

WHEREAS, pursuant to *29 Del. C. § 2722*, the Plans Management Board (“Board”) is the State of Delaware (the “State”) agency responsible for the oversight and administration of the State’s deferred compensation programs under 26 U.S.C. §§ 457(b), 401(a), & 403(b), and the State’s qualified tuition program and college investment plan under 26 U.S.C. § 529 (collectively the “Plans”);

WHEREAS, pursuant to *29 Del. C. § 2722(e)(7)*, the Board is required to (a) arrange for an annual financial audit of each Plan; (b) enter into a memorandum of understanding with the State of Delaware Office of Auditor of Accounts (“AOA”) regarding each such audit; and (c) approve payment for such audit;

WHEREAS, pursuant to *29 Del. C. § 2722*, the State of Delaware Office of the State Treasurer (“OST”) is required to and does provide administrative support for the Board;

WHEREAS, AOA, the Board, and OST are referred to collectively herein as the “Parties”;

WHEREAS, AOA, pursuant to *29 Del. C. § 2906(c)*, has sole responsibility for the arrangements under which the post-audits of State of Delaware agencies are conducted and for the selection of certified public accounting firms who shall perform the post-audits;

WHEREAS, AOA has conducted and completed the professional services procurement process in accordance with *29 Del. C. Ch. 69, subch. VI* and has selected ed a certified public accounting firm (the “Contractor”) to perform the annual post-audits for each Plan (the “Engagement”);

WHEREAS, following AOA’s selection of the certified public accounting firm and negotiations with said firm, AOA entered into a professional services agreement (the “Contract”) with the Contractor regarding the Engagement;

WHEREAS, the Contract provides for a two-year term and may be extended by AOA as provided in the Contract and this Memorandum of Understanding (the “MOU”); and

WHEREAS, AOA, the Board and OST agree that the MOU is intended to document their mutual understanding and agreement regarding payment of all Contract-related fees and other matters related to the Engagement, as specified herein, and is entered into as of the date executed by the Parties.

NOW THEREFORE, pursuant to the foregoing, the Parties hereto agree to the following:

1. All information, data, reports, and records, as are necessary for carrying out the engagement, shall be furnished to the Contractor without charge by OST, and OST shall cooperate with the Contractor during the course of the Engagement.
2. During the course of the Engagement, and prior to the completion thereof, AOA shall notify in writing and consult with OST concerning any proposed extension of or addendum or revision to the Contract, including but not limited to the exercise of any optional term or changes in the scope of the Engagement that may affect Contract-related fees or other material terms. AOA shall provide notice to OST of any such potential extension at least 30 days prior to the deadline for exercising an optional term, if any, or 30 days prior to the end of the existing term, whichever is earlier.
3. Within 10 business days of such notice, OST may provide written comments to AOA regarding the proposed extension, addendum or revision. AOA will consider OST’s comments and notify OST in writing of any extension of the Contract, or any changes made to the Contract

AOA _____
OST _____
Board _____

that may affect Contract-related fees or other material terms. If applicable, AOA shall include in any such notice, the reasons why OST's comments regarding any proposed extension, addendum or revision were rejected.

4. OST and the Board acknowledges AOA's statutory authority under 29 *Del. C.* § 2906(c) and agree that neither OST nor the Board will not enter into any agreement or arrangement with the Contractor that would create a conflict of interest. AOA agrees that, upon the termination or expiration of the Contract, it will provide advance notice to OST and the Board of the initiation of a procurement process for audit services related to a Plan. AOA agrees that a representative of the Board shall be permitted to participate on any evaluation committee formed to make recommendations in connection with any such procurement process.

5. AOA acknowledges the Board's statutory authority under 29 *Del. C.* § 2722(e)(7) to arrange and approve the payment for an annual financial audit of the Plan.

6. AOA shall be solely responsible for finalizing and publicly issuing a report relating to the annual financial audit.

7. In the first quarter of each calendar year during the term of this MOU, the Board shall approve an annual budget for the Plan that includes a line item for the payment of all annual audit-related fees and expenses, including reasonable estimates for all AOA and Contractor fees and expenses incurred or expected to be incurred each calendar year. OST shall pay the Contractor any fees and expenses due and owing under the Contract, subject to OST's right to review and approve such fees and expenses in accordance with this MOU.

8. AOA shall promptly review and tentatively approve all invoices submitted by the Contractor. AOA shall promptly send all tentatively approved fees to OST for review and

approval. OST will approve and promptly pay all undisputed charges in accordance with the budget. OST may directly address with the Contractor any disputed fees or expenses. OST and the Contractor may resolve any such disputes, and OST may pay all agreed-upon fees or expenses in accordance with the budget. Absent Board approval, OST shall not pay any fees or expenses that exceed the amount provided in the annual budget.

9. If the Contractor informs AOA of a potential cost overrun, AOA will immediately notify OST.

10. In the event a subpoena, other legal process, or a Freedom of Information Act (“FOIA”) request seeking access to or copies of work papers or any other documents related to the Engagement is received by AOA, AOA shall respond in accordance with the law. Unless prohibited by law, AOA shall immediately notify OST of its receipt of any such request for access to confidential or potentially confidential documents relating to the Engagement.

11. OST and the Board agree to allow OST’s employees to respond to audit inquiries and inform AOA and the Contractor of any significant facts regarding matters of internal controls, fraud, waste, abuse, or illegal acts. Any information obtained as a part of this Engagement will be processed in accordance with applicable audit and investigative standards.

12. All notices and communications between the parties regarding any aspect of this MOU should be directed to the following individuals in writing:

John Meyer
Director, Contributions and Plan Management
Office of the State Treasurer
820 Silver Lake Blvd, Suite 100
Dover, DE 19904
302-672-6705
John.Meyer@delaware.gov

Lydia E. York
State Auditor
Office of Auditor of Accounts
401 Federal Street, Third Floor
Dover, DE 19901
302-739-5055
lydia.e.york@delaware.gov

13. This MOU may be amended only by written agreement of the Parties.

14. OST shall pay to AOA a reasonable fee for AOA’s administrative and oversight role related to the Contract and the Engagement. A “reasonable fee” shall be earned each audit cycle covered by the Contract, including any extension term, and shall be calculated based on 10% of the amount invoiced by the auditing firm and approved by the Board each audit cycle.

15. This MOU covers only work performed under the Contract relating to Plan audits for calendar years ~~2022~~2023 and 2024 and shall expire after the Board’s acceptance of those audits and full performance by the parties. The parties contemplate that OST and AOA will enter in a further MOU governing their respective responsibilities relating to the Contract and audits for any subsequent year or years if and to the extent the Contract is extended.

**STATE OF DELAWARE
OFFICE OF THE STATE TREASURER**

**STATE OF DELAWARE
~~_____~~OFFICE OF AUDITOR OF ACCOUNTS**

John Meyer
Director, Contributions and Plan Management

Lydia E. York
Delaware State Auditor

Date: _____

~~_____~~Date:

PLANS MANAGEMENT BOARD

Donna Vieira
Chair, Plans Management Board

Date: _____