

**REQUEST FOR PROPOSALS FOR INVESTMENT MANAGEMENT SERVICES ISSUED
BY THE OFFICE OF THE STATE TREASURER**

CONTRACT NUMBER: TRE20103 - ENDOWMGRS

I. Overview

The Office of the State Treasurer (“OST”), on behalf of the Cash Management Policy Board (the “Board,” and together with OST, the “State”), issues this request for proposals (the “RFP”) seeking offers from qualified investment management firms (“Vendors”) to provide investment management services to the State for certain pooled endowment/trust funds (the “Endowment Fund”). The RFP is issued pursuant to 29 *Del. C.* §§ 6981, 6982 and 6986.

MINIMUM INVESTMENT MANAGEMENT EXPERIENCE: To be eligible to receive an award, except as provided in the next sentence, Vendors must have investment management experience with continuous performance for the last ten (10) years, with a minimum of \$1 billion in assets under management during that period. Any firm with primary headquarters in Delaware may be eligible to receive an award if such firm has a minimum of \$250 million in assets under management and a track record of at least five (5) years of continuous performance managing at least such amount may submit a proposal.

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

A. Timetable

The tentative timetable for this RFP process is as follows:

EVENT	DATE
RFP Published	February 3, 2020
Deadline for Vendor Questions	February 14, 2020
Deadline for State Responses – Q&A Closed & Published	February 21, 2020
Deadline for Vendor Proposal Submission	March 13, 2020
Finalist Presentations	Week of April 20, 2020
Estimated Board Approval	May 27, 2020
Contract Negotiations and Execution	Month of June 2020
Award Notifications	July 1, 2020
Implementation Schedule	To be completed by July 1, 2020

There will be no pre-bid meeting associated with this RFP.

This RFP is not an offer. The State reserves the right to cancel this RFP or modify the above RFP dates at any time, and for any reason.

Vendors are expected to fully inform themselves of, and by submitting a proposal shall be deemed to have read, understood and unconditionally and irrevocably accepted, all conditions,

requirements, and specifications of this RFP and all attachments and exhibits, subject only to the exception process provided for herein.

B. Proposal to Remain Open

Vendors that submit a proposal in response to this RFP shall be deemed automatically to have consented and irrevocably agreed to keep any such proposal open for nine (9) months after the deadline for Vendor proposal submissions, or for such additional period as the State and any Vendor may agree upon. Rates and fees quoted in a proposal shall remain fixed and binding on the Vendor.

C. Contract Term

The original term of the contract between each successful Vendor and the State shall be five years, with OST having three 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 the Assistant Debt and Cash Manager (the “Designated Contact”):

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

E. Submission of Written Questions

All written questions about the RFP shall be submitted to the Designated Contact listed above via e-mail on or before 4:00 p.m., prevailing Eastern time, on February 14, 2020.

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 number to which it relates.

The State will provide written responses to questions from prospective by February 21, 2020. Responses will be posted publicly and will be available at <http://bids.delaware.gov>.

II. Background

A. The Cash Management Policy Board

The Board has statutory authority over the investment and deposit of State funds, including the selection of financial institutions that provide investment and banking services to the State. The Board is comprised of nine (9) members, including five (5) Delaware citizens appointed by the Governor. The remaining four (4) members are State government officials (the State Treasurer, the Secretary of Finance, the Secretary of State and the Controller General) who serve ex-officio.

The Board has two standing committees – an Investment Subcommittee and a Banking Subcommittee. The Investment Subcommittee has standing authority to address and make recommendations to the full Board with respect to investment management services.

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

The Board has authority to approve the selection of investment managers and has proposed guidelines governing the management of the State’s endowment accounts. A copy of the Board’s investment guidelines (the “Guidelines”) is attached hereto as **Appendix B**.

B. The Office of the State Treasurer

OST serves as the administrative arm of the Board and coordinates all meetings of the Board and its committees. OST manages the State’s relationships with Board-approved investment managers.

C. The Endowment Portfolio

The Board presently oversees the management of the investments of two statutory endowment accounts under the control of the Department of Natural Resources and Environmental Control (“DNREC”). The Board also oversees the investment of certain scholarship funds on deposit from two of the State’s school districts. The Board presently has three outside managers responsible for the investment of endowment accounts and scholarship funds (collectively are referred to as the “Endowment Portfolio”), each of which presently is allocated approximately 1/3 of the value of the Endowment Portfolio.

The General Assembly established and funded the Delaware Land and Water Conservation Trust Fund (the “Conservation Fund”) to implement the State’s conservation program described in 65 *Del. Laws* ch. 212, codified at 30 *Del. C.* § 5423(a). The Conservation Fund is under the jurisdiction and control of DNREC. *See id.* There is an endowment account within the Conservation Trust Fund. *See id.* Up to 5% of the value across a 5-year rolling average of the value of the endowment account can be distributed annually to various statutory outdoor recreation, parks and trails and stewardship programs. *See* 30 *Del. C.* § 5423(b)(1). The corpus of the endowment account may not be invaded except as authorized in § 5423 of Title 30 of the Delaware Code. *See id.* Investment income from the Conservation Trust Fund endowment account can be used to support the statutory outdoor recreation, parks and trails and stewardship programs and pay administrative expenses. *See* 29 *Del. C.* § 6102A(c). The endowment account must be

invested in a manner consistent with the Guidelines. *See* 30 *Del. C.* § 5423(a). As of December 31, 2019, the Conservation Fund endowment account had assets of \$62.1 million.

The General Assembly has also established and funded a special fund appropriation in DNREC's Division of Parks and Recreation, designated as the "Parks" endowment account. *See* 29 *Del. C.* § 6102A(e). The principal of the Parks endowment account must remain intact. *See id.* The Parks endowment account must be invested in a manner consistent with the Guidelines. *See id.* DNREC is authorized to expend up to 5 percent annually, on a 5-year rolling average, of the value of the Parks endowment account for capital-related purposes, including minor capital improvements, to preserve the quality of the State's parks system and enhance recreational opportunities. *See id.* As of December 31, 2019, the Parks endowment account had assets of \$13 million.

In 2017, based on a review by the Auditor of Accounts and the Division of Accounting, the Board directed OST to work with two school districts (Smyrna and Woodbridge) to transition certain scholarship monies to Board-approved investment managers. The Board directed that the scholarship funds be managed as part of the Endowment Portfolio. As of December 31, 2019, the scholarship funds totaled \$651,500.

Historically, DNREC makes one large withdrawal from the endowment accounts during March or April of each year (approximately \$1.5 million total, \$500,000 per manager). The school districts usually make small withdrawals (less than \$50,000) to fund scholarships several times a year.

As of December 31, 2019, the Endowment Portfolio consisted of approximately \$75.8 million in multi-asset class mutual funds. A detailed investment report for the quarter ending December 31, 2019 and pertinent performance history is available at following website: <https://treasurer.delaware.gov/debt-cash-management/>.

All custodian services for the Endowment Portfolio are currently provided by The Northern Trust Company ("Northern Trust").

III. Scope of Services

By this RFP, OST requests proposals for investment management services for the Endowment Portfolio. The State may issue three awards, consistent with current practice, but reserves the right to make a single award, or any number of awards, that the Board deems appropriate. The State may also withdraw the RFP and issue no award. The State makes no commitment as to the amount to be funded to any successful Vendor, the timing of the transition of management responsibility to a successful Vendor, or the frequency or amount of withdrawals from a successful Vendor.

Vendors must be able to provide detailed reporting, attend periodic meetings with OST or the Board, reconcile accounts with the custodian, comply with this RFP and the Scope of Services attached hereto as **Appendix A**, and provide such additional services as OST or the Board may reasonably request from time-to-time.

IV. Minimum Requirements to Apply

Proposals that do not meet the following minimum requirements, or that do not comply with the specifications or material terms and conditions of this RFP, may be considered non-responsive and rejected. Vendors must clearly demonstrate in their proposals how they meet the following minimum qualifications:

1. Vendors must have investment management experience with continuous performance for the last ten (10) years, with a minimum of \$1 billion in assets under management during that period.
2. Notwithstanding the foregoing, any firm with primary headquarters in Delaware may apply if such firm has a minimum of \$250 million in assets under management and a track record of at least five (5) years of continuous performance managing at least such amount may submit a proposal.

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 Section 24 of the fiscal year 2020 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:

- <http://www.bids.delaware.gov/>
- <http://treasurer.delaware.gov/requests-proposals/>
- <http://nast.org>

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the Designated Contact. Communications must be submitted electronically to the following email address: **Treasury_RFP@delaware.gov**.

5. Contact with Professionals

OST may retain consulting services or legal counsel to assist in the review and evaluation of this RFP and Vendor responses. Vendors shall not contact OST's professionals or legal counsel on any matter related to the RFP unless so instructed in writing by the Designated Contact. Vendors who make contact in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Vendors currently doing business with the State who require contact with such professionals or legal counsel in the ordinary course of business.

6. Contact with Other State Employees

Direct contact with State employees other than the Designated Contact regarding this RFP is expressly prohibited without prior written consent from the Designated Contact. Vendors who directly contact a State employee in violation of this provision may be disqualified from participation in the RFP process. Exceptions exist only for Vendors currently doing business with the State who require contact with State employees in the ordinary course of business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity currently debarred or suspended from conducting business in the State or any other jurisdiction for any reason may be deemed ineligible to respond to this RFP.

8. Exclusions

The State reserves the right to refuse to consider any proposal from Vendors who, or whose officers or staff:

- a) Have been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b) Have been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of integrity or honesty;
- c) Have been convicted or has had a civil judgment entered for a violation of any state or federal antitrust statute;
- d) Have failed:
 - i. Without good cause to perform under an investment management services contract; or
 - ii. To perform satisfactorily in accordance with terms of any an investment management services contract;
- e) Have violated ethical standards set out in law or regulation; and

- f) Any other cause determined by OST or the Board to be serious and compelling, and which undermines confidence in a Vendor's ability to perform under any resulting investment management 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 with regard to 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 sufficient to present a fully responsive proposal are not desired.

Proposals must be realistic and must represent the best estimate of time, materials and other costs, including the impact of inflation and any economic or other factors that are reasonably predictable. The State shall have no responsibility or liability for a Vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

A Vendor should describe in detail on **Attachment 5** (exceptions) any areas where it will be unable to provide services as requested or required herein. In addition, if a Vendor is able to provide the services exactly as requested or required but believes that there would be benefits (such as cost savings or improved service) to making adjustments to the services outlined, the Vendor should describe the adjustments and the benefits on **Attachment 5**. Acceptance or rejection of any or all exceptions is within OST's sole discretion.

Vendors must respond to all mandatory requirements presented in this RFP. The words "shall," "will," and "must" are used herein to designate mandatory requirements. Failure to respond to a mandatory requirement may, in OST's discretion, result in the disqualification of a Vendor from the RFP process.

2. Proposal Delivery

Each proposal must be submitted with six (6) paper copies and one (6) electronic copy on USB flash drive. In addition, one electronic copy must be emailed to the Designated Contact at the address indicated above.

All proposals are to be sent to the attention of the Designated Contact to be **received no later than 4:00 p.m., prevailing Eastern time, on March 13, 2020** (the "Proposal Deadline"). Paper copies of a proposal may be delivered by express delivery (*e.g.*, FedEx, UPS, etc.), United States mail, or by hand to the address for the Designated Contact listed above.

Vendors are directed to clearly print "PROPOSAL ENCLOSED" and "CONTRACT NO. TRE20103 - ENDOWMGRS on the outside of the bid submission package.

Any proposal received after the Proposal Deadline shall not be considered and shall be returned unopened. Vendor bear the risk of delays in delivery.

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments, or modifications to proposals shall not be accepted or considered after the Proposal Deadline.

4. Proposal Costs and Expenses

The State is not responsible for and will not pay any costs incurred by any Vendor in responding to this RFP, including, but not limited to, costs associated with proposal preparation, printing, and delivery, the interview/presentation process and contract negotiations.

5. Late Proposals

Proposals will be date and time stamped upon receipt. Proposals received after the Proposal Deadline will not be opened or considered. All physical and electronic copies must be received by the Proposal Deadline.

6. Proposal Opening

Timely proposals will be opened only in the presence of OST personnel. Any unopened proposals will be returned to the proposing firm. Immediately after the closing date and time, OST staff, including at least one staff member serving as a witness, will create a public log containing the names of all Vendors that submitted proposals and the dates and times of OST's receipt of each proposal. Unless required by applicable law, the contents of any proposal shall not be disclosed prior to contract award.

7. Non-Conforming Proposals

OST may, in its discretion, reject any non-conforming proposals. Non-conforming proposals are defined as those that do not meet the material requirements of this RFP. OST shall have the authority and discretion to determine whether an RFP requirement is material, or a mere formality or non-substantive requirement.

8. Confidentiality of Documents

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of a Vendor's proposal will be treated as confidential during the evaluation process and will not be available for review by anyone other than OST, the Board, the Evaluation Team and counsel. There shall be no disclosure of any Vendor's information to a competing Vendor prior to award of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State is required to comply with the State of Delaware Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA"). Under FOIA, the State's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon written request. Once a proposal is received by the State, it becomes subject to FOIA's public disclosure obligations, subject to any applicable exemptions.

The State wishes to create a business-friendly environment and procurement process. As such, the State respects that Vendors desire to protect intellectual property, trade secrets and other confidential business information (collectively referred to herein as "confidential business information"). If a Vendor feels that it cannot submit a proposal without including confidential business information, it must adhere to the following procedure or such proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the Vendor's confidential business information may be lost.

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

Vendors may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. *The envelope must contain a letter from the submitting Vendor's legal counsel describing the information contained in the documents, representing in good faith that the information is protected from disclosure under FOIA, and briefly stating the reasons that such information is exempt under FOIA.*

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State will determine whether the procedure described above has been followed. A Vendor's allegation as to its confidential business information shall not be binding on the State; rather, the State shall independently determine the validity of any Vendor designation as set forth in this section. Any Vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently

assess the legal and factual validity of any information designated as confidential business information. *Accordingly, Vendors assume the risk that confidential business information included within a proposal may enter the public domain.*

9. Sub-Contracting

Subcontracting is not permitted without OST's prior written consent. Any Vendor that submits a proposal contemplating the use of independent contractors or a subcontractor shall identify the purpose for such use, as well as the scope of work and other terms for any such arrangement. All independent contractors and subcontractors must agree in writing to be bound by the terms of the Professional Service Agreement (the "PSA") governing the relationship between the Vendor and the State.

10. Discrepancies and Omissions

Vendors are fully responsible for the completeness and accuracy of their proposals, and for examining this RFP and all attachments, exhibits and addenda. Failure to do so will be at the sole risk of Vendors. Should a Vendor find discrepancies, omissions, or unclear or ambiguous language in this RFP, Vendor should seek clarification from OST pursuant to the question and answer process detailed below. Protests based on any discrepancies, omissions, or unclear or ambiguous language will be disallowed if the same have not been timely raised in and preserved through the question and answer process below.

11. RFP Question and Answer Process

OST will allow written requests for clarification of the RFP. Vendors must submit written questions in the format specified below to be received by the Designated Contact by 4:00 p.m., prevailing Eastern time, on February 14, 2020. Questions must be submitted electronically to the following email address: **Treasury_RFP@delaware.gov**.

All questions will be consolidated and answered in a single response that will be posted on the State's websites at <http://www.bids.delaware.gov/> by 4:00 p.m., prevailing Eastern time, on February 21, 2020, or such other date and time as may be prescribed by OST. Vendor names will not be attributed to questions in OST's response.

Questions should be submitted in a standalone Microsoft Word document in the following format:

Section number
Paragraph number
Page number
Text (of passage being questioned)

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

12. State's Right to Reject Proposals

OST and the Board reserve the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be RFP specifications or contained in a Vendor's response), to assess the merits and qualifications of each proposal and Vendor, to solicit new or modified proposals on the same project, as OST and the Board may deem necessary or appropriate or in the best interest of the State.

13. State's Right to Cancel Solicitation

The State reserves the right to cancel this solicitation at any time during the procurement process, for any reason, or for no reason at all. The State makes no commitments, expressed or implied, that this process will result in a contract with any Vendor.

A Vendor's participation in this RFP process may result in the State selecting the Vendor to engage in discussions and negotiations of a formal contract. The commencement of such negotiations does not signify, and may not be interpreted as, a commitment by the State to execute a contract or continue negotiations. The State may terminate negotiations at any time and for any reason, or for no reason at all.

14. State's Right to Award Multiple Source Contracting

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

15. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both the proposal and subsequent request is received by the Designated Contact prior to the Proposal Deadline. A withdrawn proposal may be revised and re-submitted and will be considered timely as long as the revised proposal is received by the Proposal Deadline.

All proposals received prior to, and which have not been withdrawn by, the Proposal Deadline shall become firm offers and shall not be revocable after that time.

16. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted at <http://www.bids.delaware.gov>.

17. Exceptions to the RFP

Any exceptions to the RFP or any attachments, exhibits or addenda, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 5** and submitted with a proposal by the Proposal Deadline. Vendors that fail to timely and otherwise adequately preserve and assert exceptions shall be deemed to have waived all

such exceptions and related arguments. The State has discretion with respect to the acceptance or rejection of exceptions.

18. Exceptions to the PSA

Attached hereto as **Appendix C** is OST's standard form of PSA and related exhibits. The terms of the PSA will govern the contractual relationship between a Vendor and the State. Any exceptions to the PSA, along with corresponding explanations and alternatives, must be noted and explained on **Attachment 5**. Vendors shall provide a redlined version of the PSA ("Redline") reflecting all requested changes. Vendors that fail to timely and otherwise adequately preserve and assert exceptions to the PSA shall be deemed to have waived all such exceptions and related arguments. The State is not bound by any provision of the form PSA and has discretion with respect to the acceptance or rejection of PSA exceptions.

19. Award of Contract

The issuance of a contract award ("Award") is subject to approval by OST and the Board. OST and the Board have the sole right to select the successful Vendor and approve the issuance of any Award and the terms of any PSA. OST and the Board may (a) approve the issuance of an Award to a Vendor other than the Vendor who submitted the lowest priced proposal, (b) issue multiple Awards, or (c) withdraw the RFP and issue no Award. No Award or contract resulting from this RFP process shall be effective unless and until authorized by OST and the Board.

An Award, if any, will be communicated to the successful Vendor and published only after (a) OST and the Board authorize the issuance of an Award, and (b) OST and each such Vendor execute a formal PSA on terms acceptable to OST and the Board. No Vendor will acquire any legal or equitable rights or privileges until the occurrence of both events.

The Award, the PSA and all attachments and exhibits, including all pricing information, and amounts and other details concerning any payments made to a successful Vendor shall be matters of public record subject to disclosure under FOIA.

VI. Proposal Requirements and Evaluation

A. Required Information

1. Vendors shall provide the following information with their proposals in the order listed below. Failure to respond to any request for information within this RFP may result in rejection of the proposal. The proposal will be presented in a spiral-bound book or 3-ring binder, with each completed attachment identified in its own tab.

Tab A: Transmittal Letter. The letter must contain:

- A summary of the Vendor's investment management services experience, and interest in providing these services to the State;

- Indicate whether the proposal contains confidential business information that is being submitted in a separate, sealed envelope in accordance with the procedure above; and
- A representation that no investment management services related to this RFP will take place outside of the United States.

Tab B: Questionnaire(s). Provide a detailed set of responses to the questions posed in **Attachment 1**. All Vendors must respond to **Attachment 1**. Responses should be both complete and concise.

Tab C: Rates of Return Spreadsheet. Vendors are required to complete **Attachment 2** detailing historical performance of their portfolio. Please submit both a printed version of the excel spreadsheet as Tab C as well as electronic copies.

Tab D: Confidential Information Form. Vendors should identify any material information that is considered confidential using the form of **Attachment 3**. Any information not within this form is automatically subject to FOIA.

Tab E: Schedule of Fees. Provide a schedule of fees using **Attachment 4**. Vendors may also provide alternative fee structures (including, but not limited to, any fixed fee arrangements); however, any such alternative fee structure must be in addition to the mandatory schedule of fees. Paper copies of the proposal must include a printed Excel spreadsheet.

Tab F: SEC Registration. Provide proof of Vendor's registration, as an investment advisor with the Securities and Exchange Commission, and provide the most recent ADV, Parts 1 and 2, or otherwise indicate that the Vendor is exempt from registration. If exempt, Vendor must explain the nature of the exemption.

Tab G: 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 5**. Successful Vendors who do not take exceptions as required are deemed to have consented and irrevocably agreed to the terms of the RFP.

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

Tab I: Financial Statements. Provide *electronic* copies (no paper copies) of the last three years of audited financial statements. These statements shall be submitted on the electronic version of the proposal only. If, and only if, audited financial statements are not available, Vendors may submit unaudited financial statements (in which case, Vendors shall explain in detail why audited financial statements are not available).

Tab J: Business References. Provide at least three business references using the form provided in **Attachment 6**.

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

Tab L: Retention Policies. Vendors responding to this RFP must attach copies of their document retention policies or substantive summaries of the same.

2. Prior to Award, the successful Vendor shall furnish OST with proof of (i) all necessary business licenses, including a valid State business license, (ii) certification(s) necessary to perform services identified herein, and (iii) proof of insurance required under the PSA.

B. Proposal Evaluation

1. Initial Screening

The Designated Contact and/or designated OST staff shall perform an initial screening of all proposals submitted by qualified Vendors and evaluate them for timeliness and compliance with the minimum qualifications and other requirements set forth herein. OST shall have discretion with respect to any such determination. Proposals that pass the initial screening shall be forwarded to the Evaluation Team for scoring and evaluation as provided herein.

2. The Evaluation Team

An evaluation team (“Evaluation Team”) that may be composed of representatives from OST, the Board and other State entities will evaluate qualified Vendor proposals meeting all RFP requirements based on the quantitative and qualitative criteria set forth below. Neither the lowest priced, nor the highest scoring proposal, will necessarily be selected. OST may in its discretion remove or add members of the Evaluation Team.

3. Evaluation Criteria

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

The State has outlined the services it will require in the Scope of Services. In formulating responses, Vendors are encouraged to suggest additional or modified services in their proposals if such additional or modified services will provide a benefit to the State.

Proposals that meet submission requirements of the RFP will be evaluated and scored based on the criteria and points system set forth in the table below.

Evaluation Criteria	Point Value
<u>Portfolio Performance</u> : Historical returns for a portfolio most closely resembling that portfolio proposed for the Endowment. Performance will be evaluated net of fees on a risk-adjusted basis.	40
<u>Firm Qualifications</u> : Including firm age, history, reputation, Tenure and experience of investment team, client base and overall “fit” for management of the Endowment funds.	25
<u>Pricing</u>	20

<u>Technology, Accounting & Reporting</u> : Reporting capabilities, electronic access, internal data controls, and investment guideline compliance.	15
TOTAL POINTS	100

4. Proposal Clarification

The Evaluation Team may communicate with a Vendor in order to clarify uncertainties or gain better understanding of a proposal. The Evaluation Team may require Vendors to modify or supplement their proposals as a result of such communication. Vendors must provide all requested information in a timely manner, which shall mean on or before any deadline established by the Evaluation Team.

5. Communication with References and Past or Present Clients

The Evaluation Team may communicate with all references provided by a Vendor on **Attachment 6** and may use information gained thereby in the evaluation process. In addition, the Evaluation Team may communicate with any known past or present client of a Vendor outside of the reference list, and any information gained may be used in the evaluation process. Vendors that submit a proposal in response to this RFP shall be deemed to have (a) waived any confidentially 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 and the Board, may invite selected Vendors to make in-person oral presentations to the Evaluation Team. Presentations are tentatively scheduled for the week of April 20, 2020. *Any costs associated with oral presentations will be borne by the Vendor.* The State requests that all individuals who are expected to be assigned to this engagement be in attendance.

VII. Contract Process

A. Formal Contract

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

B. Modification of PSA

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

C. Time Frame

A Vendor who receives an Invitation must execute a Contract within twenty (20) business days from the date of the Invitation, unless such period is extended by OST, in its discretion. If no Contract has been executed by the applicable deadline, OST may in its discretion cancel the Invitation and enter negotiations with another Vendor.

D. Inception of Services

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

E. Cancellation of Award

If a Vendor that receives an Award fails to commence providing investment management services when due under the Contract, OST, without liability, may cancel and annul the Award and terminate any Contract. In such event, an Award under this RFP may be made to another Vendor.

F. Collusion or Fraud

Vendors may not restrain competition by agreement to offer a fixed price, or otherwise. By responding to this RFP, each Vendor shall be deemed to have represented and warranted that: (i) its proposal is not made in connection with any competing Vendor submitting a separate response to this RFP; (ii) its approval is in all respects fair and without collusion or fraud; (iii) the Vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and (iv) no employee or official of the State, the Board or OST participated directly or indirectly in the Vendor's proposal preparation.

If at any time, whether prior to or after the issuance of an Award, OST determines that any of the foregoing representations was untrue when made or subsequently became untrue, OST may, without liability, cancel and annul the Award and terminate any Contract. In such event, an Award under this RFP may be made to another Vendor.

G. Lobbying and Gratuities and Contingency Fees

As required by 29 *Del. C.* § 6903(b), the successful Vendor is deemed to have sworn under oath that the Vendor has not employed or retained any company or person to solicit or secure a Contract by improperly influencing OST or the Board in this procurement process. In addition, the Vendor represents and warrants that it has not directly or indirectly paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for Vendor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from an Award or Contract.

For breach or violation of the foregoing oath, representation or warranty, OST, in its discretion and without liability, shall have the right to cancel and annul any Award and terminate any Contract, or deduct from the Contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

H. Solicitation of State Employees

During the RFP process and for the term of the Contract, Vendor shall not, directly or indirectly, solicit any employee of the State to accept employment with the Vendor, its affiliates, or any person acting in concert with Vendor, without prior written approval of OST.

VIII. Attachments and Appendices

The following items are provided for use in your response. Attachments are required forms to be submitted with your proposal as described in this RFP. Appendices are provided as additional detail or information to assist in your proposal response.

1. Attachments

<u>Attachment 1</u>	Vendor Questionnaire
<u>Attachment 2</u>	Rates of Return Spreadsheet (Excel spreadsheet)
<u>Attachment 3</u>	Confidential Information Form
<u>Attachment 4</u>	Schedule of Fees (Excel spreadsheet)
<u>Attachment 5</u>	Exception Form
<u>Attachment 6</u>	Business References

2. Appendices

<u>Appendix A</u>	Scope of Services
<u>Appendix B</u>	Cash Management Policy Board Investment Guidelines
<u>Appendix C</u>	Form of Professional Services Agreement

Attachment 1: Vendor Questionnaire

CONTRACT NUMBER: **TRE20103- ENDOWMGRS**

Firm and Team Qualifications

1. **History/Values.** Describe in detail the history of your firm, including your founding values and core principles.
2. **Ownership.** Describe your firm’s current ownership structure. Include any pending agreements or announced plans to merge, sell or significantly change the ownership structure of the firm or any material portion thereof. Describe any material changes in ownership during the past five years.
3. **Organization.** Provide an organizational chart for your firm. Clearly identify the total number of employees in each of the major categories, such as portfolio management, research, portfolio administration, marketing/client service, etc.
4. **Growth Plan.** Describe your firm’s growth plans over the next 3-5 years, including proposed:
 - a) AUM growth
 - b) Earnings growth
 - c) New product introductions
 - d) Expansion of investment team
5. **Investment Team.** Describe in detail the composition and investment experience of those individuals who would be assigned to the management of the Endowment Portfolio. For each such individual, include a complete resume with both work and academic experience. Highlight each individual’s experience with accounts managed on behalf of public sector clients as well as the total accounts and nature of same historically and currently managed by the individual. What level of access will the OST have with respect to each of the persons identified?
6. **Litigation.** Describe any Securities and Exchange Commission action or sanctions against your firm, its subsidiaries, or contracted third party processors that is presently pending or that was resolved (favorably or unfavorably) in the prior five years.
7. **Assets & Accounts.** Provide the following information as it relates to your firm’s total investment management business. Comment on any large losses or gains.

Year	Assets Gained	Assets Lost	Assets at End of Period	Accounts Gained	Accounts Lost	Accounts at End of Period
2019						
2018						
2017						

2016						
2015						
2014						

8. **Client Base.** Provide the following information as it relates to your firm’s total investment management business as of December 31, 2019, if available, or September 30, 2019:

Client Type	Number of Accounts	Assets
Corporate		
Public		
Taft-Hartley		
Endowment/Foundation		
Individuals		
Family Offices		
Mutual Funds		
Other		

Client Type	Number of Accounts	Assets
Total Firm		

9. **Strategies.** List the official name of your firm’s relevant strategies and GIPS-compliant composite for the services being procured in response to this RFP. Provide the specific name of the relevant strategies as they appear in the eVestment Alliance database. Identify and explain the closure or termination of any related strategies, over the preceding 10 years, to those being proposed in your firm’s response to this RFP.
10. **Physical Office.** Provide the address of the physical location from which the Endowment Portfolio will be managed.

Process and Performance

11. **Construction.** Describe your proposed process and procedures for portfolio construction for the Endowment Portfolio. Specify any circumstances under which your firm would deviate from such portfolio construction process.
12. **Return/Risk.** What is the targeted risk/return profile of the Endowment Portfolio? How is portfolio risk measured, monitored and controlled?
13. **Benchmarks:** Provide the benchmark(s) typically used to measure relative performance of the Endowment Portfolio.
14. **Excess Returns.** What unique attributes or competitive advantage does your firm have that distinguishes it from its competitors in the fulfillment of this RFP?
15. **Value Creation.** Within your investment process, roughly what portion of the “value added” comes from each of the following decisions:
- a. _____% Asset Allocation (equity/fixed income/cash)
 - b. _____% Security Selection
 - c. _____% Other: _____(Describe)
16. **Performance Parameters.** Describe the investment environments in which your firm’s strategies can be expected to outperform and underperform. Specifically, discuss how you manage downside risk in different market environments including falling equity markets or rising interest rates.
17. **Approach.** How would you describe your firm’s investment approach? Top-down or bottom-up? Quantitative or fundamental? Growth or value?
18. **Execution.** Who on your investment team is responsible for asset allocation? Security selection? How are such decisions made?

19. **Capacity.** Describe any capacity constraints that may limit your firm's ability to successfully manage the Endowment Portfolio. Have you identified an asset level at which you will cap investment?
20. **Overall Management.** Describe any other qualifications that make your institution the best candidate to manage the Endowment Portfolio.

Technology, Accounting & Reporting

21. **Structure.** What is the proposed investment account structure for the Endowment Portfolio (i.e., separate account, commingled trust, limited partnership, & institutional mutual fund)?
22. **Redemptions.** What are the proposed redemption and liquidity provisions for the Endowment Portfolio, if any (i.e., daily, monthly, quarterly, annually, only at termination of fund, lock-up period, gates)? Describe the alignment between liquidity offered to your investors and liquidity of underlying investments.
23. **Pricing.** With regard to your firm's pricing procedures, what is the pricing frequency and level of pricing independence? How does your firm price potentially illiquid securities that pose pricing difficulties?
24. **Reporting.** What steps are taken to ensure the accuracy of your portfolio reports? Are reports audited before they are mailed to clients? If so, by whom? How soon can such information be made available at month, quarter and year end?
25. **Electronic Access.** Do you provide online access for retrieving daily, month-end, and quarterly reports as well as daily portfolio holdings?
26. **Guideline Compliance.** How does your firm ensure compliance with its clients' investment guidelines?
27. **Custody.** Currently, OST uses Northern Trust as custodian for all investment accounts. Does your firm have experience working with Northern Trust as custodian? Do you foresee any issues regarding this relationship or the reporting requirements that may be imposed by the custodian?
28. **Client Correspondence.** Do you communicate with clients through general newsletters, monthly performance letters or other generic media? If yes, please provide examples of such correspondence for the past 12 months.

Pricing Proposal

1. Please provide a proposed fee structure for the services described in **Attachment 4** for the initial contract period and any extension periods. The proposed fee structure may be a fixed price or a blend of the two approaches.

Attachment 2: Rates of Return Spreadsheet

CONTRACT NUMBER: TRE20103 – ENDOWMGRS

This attachment is available as an excel spreadsheet for Vendors to download and submit with their proposals. Please download and complete Attachment 2 from:

<http://bids.delaware.gov>

Attachment 4: Schedule of Fees

CONTRACT NUMBER: TRE20103 – ENDOWMGRS

Attachment 6: Business References

CONTRACT NUMBER: TRE20103 – ENDOWMGRS

List a minimum of four business references. At least three (3) of the references should be from government entities. Business references should include the following information:

- Business name and mailing address
- Contact name, phone number and email address
- Number of years doing business with
- Type of work performed

Please do not list any entity, officer or employee of this State as a business reference.

If you have held a contract with the State within the last 5 years, provide a separate list of the contract(s), describe the scope of work performed and include the name, title, phone number and email address for your primary contact for each engagement.

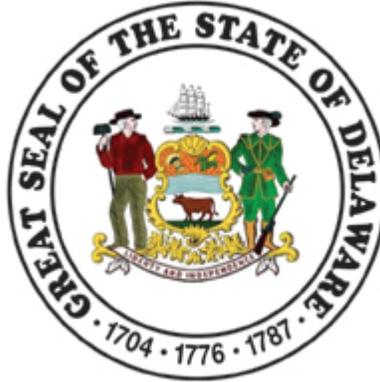
APPENDIX A: SCOPE OF SERVICES

- I. Investment Management:** Provide investment management services in a fiduciary capacity for the Endowment Portfolio in accordance with the Guidelines. Vendors may be requested to provide assistance with or undertake such other matters as requested by the Board, OST, and/or the State’s consultant as are consistent with and/or ancillary to the foregoing services. Matters may include the review of proposed changes to the Guidelines, identification of revisions to the Guidelines that would improve Vendor execution of strategies, and analysis and quantification of the impact any proposed modification to the Guidelines would have on the Endowment Portfolio.
- II. Reporting:** As a strategic partner in managing the State’s investments, Vendors are expected to provide the Board, OST, and/or the State’s consultant with proactive reporting on economic and market conditions affecting the Endowment Portfolio. Vendors will be required to prepare and deliver to the State’s consultant and OST monthly, quarterly, annual and event-driven reports as described in the table below. Reports are to be made available in electronic form.

Report Type	Minimum Requirements
Monthly	Asset listing that contains descriptions and values of all securities under management. The asset listing should include (a) original purchase cost, (b) market value, (c) accrued interest receivable, and (d) unrealized gains and losses.
	A complete listing of all transactions, including the monthly custodial market value and accrued interest receivable reconciliation.
	Time weighted rates of return for the month, quarter-to-date, year-to-date, and since inception based upon audited and reconciled market values.
	Analysis of compliance with the Guidelines.
Quarterly	Economic and market commentary on events that impacted the strategy, values and performance.
	Detail changes in the strategy and/or key decisions during the quarter.
	Time-weighted rates of return for the quarter, year-to-date, and since inception based upon audited market values.
	Provide detailed performance attribution reports that identify the sources of investment return during the quarter.
Event-Driven	Any and all organizational developments that result in any changes to the Vendor’s organization, investment philosophy, decision-making process, financial condition, ownership, and/or professional staff.

III. Meetings & Presentations: From time to time, Vendors may be required to attend meetings or make presentations to the Board, OST, and/or the State’s consultant, as requested. The agenda for such meetings will generally consist of:

- a. *Strategy Review*—Discussion of the Vendor’s strategies and objectives, investment style, and compliance with guidelines that apply to the management of that portfolio.
- b. *Performance Review*—Discussion of the Vendor’s investment performance and risk for the quarter, year-to-date, and since inception periods, including discussion of investment strategies and positioning that impacted the portfolio’s results.
- c. *Organizational Review*—Discussion of recent and material developments at the Vendor’s organization including ownership, organizational structure, financial condition, significant litigation, investment philosophy, investment decision-making process, professional staff, and client-servicing responsibilities.



State of Delaware Cash Management Policy Board

STATEMENT OF OBJECTIVES AND GUIDELINES FOR THE INVESTMENT OF STATE OF DELAWARE FUNDS

**STATEMENT OF OBJECTIVES AND GUIDELINES FOR THE INVESTMENT
OF STATE OF DELAWARE FUNDS**

Originally adopted January 18, 1982

Revised August 28, 2019

1.0 Statutory Authorization

1.1 Role of the Cash Management Policy Board. The Cash Management Policy Board ("Board") was created by 63 *Del. Laws*, ch. 142, to establish policies (a) for the investment of all money belonging to the State or on deposit from its political subdivisions, other than money deposited in any State Pension Fund or the State Deferred Compensation Program ("State Funds"), and (b) to determine the terms, conditions and other matters relating to those investments, including the designation of permissible investments.

1.2 Role of the Office of the State Treasurer. The investment of State Funds is to be made by the Office of the State Treasurer ("OST") in accordance with the objectives and guidelines outlined herein ("Guidelines"); provided, however, that the Board, by majority vote, may authorize OST to depart from the Guidelines.

2.0 Accounts

2.1 Designation of Accounts. For purposes of these Guidelines, State Funds are to be allocated and held in a variety of accounts as outlined below ("Accounts"):

2.1.1 Collection and Disbursement Accounts. Cash required to meet the State's anticipated near-term operating requirements is to be held in "Collection and Disbursement Accounts." These accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 5.0 below by qualified financial institutions ("Cash Management Banks") selected by the Board through a competitive bid process.

2.1.2 Liquidity Accounts. Cash not required for the State's near-term operating requirements but readily available for anticipated funding needs of the State will be held in "Liquidity Accounts." State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 6.0 below by qualified investment managers ("Liquidity Managers") selected by the Board through a competitive bid process.

2.1.3 Reserve Accounts. Cash that is not anticipated to be needed for the State's near-term operating requirements or funding needs, but can be made available for unanticipated needs is to be held in "Reserve Accounts". State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 7.0 below by qualified investment managers ("Reserve Managers") selected by the Board through a competitive bid process.

2.1.4 Endowment Accounts. "Endowment Accounts" consist of State Funds set-aside for specified legislative purposes with the intent of growing the corpus of such funds over time. State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 8.0 below by qualified investment managers selected by the Board through a competitive bid process ("Endowment Managers").

2.1.5 Operating Accounts. "Operating Accounts" consist of State Funds set aside for specified purposes to be made available as and when required to meet such purposes. State Funds in these accounts will be managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 9.0 below by Liquidity Managers or such other financial institutions as determined by the Board.

2.1.6 Settlement Accounts. "Settlement Accounts" consist of State Funds that have been deposited into a demand deposit account following the processing of a debit or credit card transaction. Cleared amounts deposited to the Settlement Accounts, net of merchant processor and related fees, shall be transmitted via ACH to a Collection and Disbursement Account within two business days after deposit. Settlement Accounts shall be

managed and invested in accordance with the general provisions of these Guidelines and the specific provisions of Section 10.0 below.

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

3.0 Allocation of State Funds

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

3.2 Allocation among Accounts

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

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

3.3 Allocation among Banks and Managers

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

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

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

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

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

4.0 General Investment Standards and Objectives

4.1 Standard of Care. In general, the banks and managers engaged as fiduciaries to manage State Funds shall exercise the judgment and care over the investment of such funds with the care, skill, prudence, and diligence under the circumstances then prevailing that prudent professional investment managers, acting in like capacity and familiar with such matters, would use in the investment of State Funds.

4.2 General Objectives. Subject to the more specific policies set out in Sections 5.0, 6.0, 7.0, 8.0, and 9.0 of these Guidelines, State Funds shall be invested in a manner that ensures the safety of, provides liquidity for, and maximizes return on such funds. For purposes of these Guidelines, the foregoing priorities have the following meanings:

4.2.1 Safety. Safety is defined as the ability, under ordinary market conditions, to ensure against the loss of the original investment amount of State Funds. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the portfolio.

4.2.2 Liquidity. Liquidity is defined as the capacity to realize, convert to cash, an asset in a timely fashion, at or near its value. An asset is said to be liquid when the act of selling has little impact on the asset's price. State Funds shall remain sufficiently liquid to meet all anticipated operating requirements and funding needs, and should be managed and invested for availability to meet unanticipated needs with minimal losses associated with illiquidity.

4.2.3 Return. Return is defined as the gain or loss on an investment over a specified period. Gains on investments are considered to be any income received from the security plus the earnings an asset generates in excess of its initial cost. The State Funds portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints of safety and liquidity set out herein.

5.0 Collection and Disbursement Accounts

5.1 Investment Objectives. The funds in the Collection and Disbursement Accounts must be immediately available to support the State's daily governmental programs and activities. The primary investment objectives are therefore safety and liquidity of such funds; return is a secondary priority. OST may, consistent with these investment objectives, minimize credit risk associated with demand deposit account balances at Cash Management Banks through same-day money market mutual fund sweep products in accordance with subsection 5.2.2 and/or banking services arrangements offering "daylight overdraft" or similar privileges. End-of-day ledger balances shall be secured as provided in Section 5.2.

5.2 Permissible Investments. Cash Management Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institution.

5.2.1 Demand Deposit Accounts. State Funds held by Cash Management Banks in demand deposit accounts shall be collateralized with one or more of following approved methods: (a) pledges of government securities that meet the definitions set out in subsections 6.3.1.1 and 6.3.2.1 to a custody account held for the benefit of the State at a Federal Reserve Bank, or held by an independent trust company, bank or similar financial institution rated in the highest rating category by at least one Nationally Recognized Statistical Rating Organizations approved by OST ("NRSRO"); (b) irrevocable standby letters of credit ("LOCs") issued by a Federal Home Loan Bank or financial institution rated in the highest rating category by at least one NRSRO; and (c) surety bonds issued by insurance companies rated in the highest rating category by at least one NRSRO (collectively, "Eligible Collateral"). The terms of any pledge or custody agreement, LOC, or surety bond shall be reviewed and approved by OST. The aggregate value of Eligible Collateral shall equal or exceed the total average monthly closing ledger balances of State Funds held or expected to be held by Cash Management Banks during the prior month, plus such additional amount of Eligible Collateral as OST may require Cash Management Banks to provide to protect against volatility and ensure that all uninsured ledger balances are fully secured at the close of each business day. Eligible Collateral in the form of government securities shall be marked to market at the close of each business day using an independent pricing service.

A Cash Management Bank may substitute or reduce Eligible Collateral provided that Eligible Collateral levels meet or exceed the foregoing requirements. OST shall be provided with same-day notice of any such substitutions or reductions of Eligible Collateral. In addition, a Cash Management Bank shall provide OST with a detailed report of Eligible Collateral held in a custody account as requested by OST.

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

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

6.0 Liquidity Accounts

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

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

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

6.3.1 United States Treasury Obligations

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

6.3.1.2 Percentage Limit: No limit.

6.3.2 United States Government Agency Obligations

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

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

6.3.3 Certificates of Deposit and Time Deposits

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

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

6.3.4 Corporate Debt Instruments

6.3.4.1 Definition: Commercial paper, variable rate notes, and non-convertible bonds and debentures denominated in U.S. dollars and issued by a U.S. corporation or a non-domestic corporation subject to the laws of Japan, Canada, United Kingdom, the Netherlands, Germany, France, Switzerland, Australia, New Zealand, Sweden, or Norway. Such securities must be rated by at least two NRSROs and (i) in the case of commercial paper, must be rated not lower than "A-2" by S&P, "P-2" by Moody's and "F2" by Fitch and the senior long-term debt of the issuer must be rated not lower "A-" by S&P, "A3" by Moody's and "A-" by Fitch (excluding asset-backed commercial paper that is rated A1 or better) and (ii) in the case of notes, bonds and debentures, must be rated not lower than "A-" by S&P, "A3" by Moody's and "A-" by Fitch; provided that, any security that meets the foregoing rating standards and is backed fully by an irrevocable, unconditional letter of credit issued by a banking institution shall not be permissible hereunder unless such banking institution meets the definition of subsection 6.3.3.1 (in which case, any such securities will be deemed to be securities of both the corporate issuer and the banking institution for purposes of calculating the Percentage Limits set forth in subsections 6.3.4.2 and 6.3.3.2, respectively).

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

6.3.5 Repurchase Agreements

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

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

6.3.6 Money Market Funds

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

6.3.6.2 Percentage Limit: No limit.

6.3.7 Canadian Treasury Bills

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

6.3.7.2 Percentage Limit: 25% in total.

6.3.8 Canadian Agency Securities

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

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

6.3.9 Mortgage-Backed Securities

6.3.9.1 Definition: Government National Mortgage Association, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation mortgage-backed securities issued in the form of pass-throughs; provided that, such securities have (i) been issued and guaranteed by the US Government or

Government Agency and (ii) an average life not to exceed two years from the date of settlement (unless such securities are subject to periodic reset of coupon or interest rate, in which case the average life may not exceed three years from the date of settlement).

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

6.3.10 Asset-Backed Securities

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

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

6.3.11 Supranational Organizations or International Agencies

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

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

7.0 Reserve Accounts

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

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

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

7.3.1 United States Treasury Obligations

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

7.3.1.2 Percentage Limit: No Limit.

7.3.2 United States Government Agency Obligations

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

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

7.3.3 Certificates of Deposit and Time Deposits

7.3.3.1 Definition: Certificates of deposit and time deposits denominated in U.S. dollars and issued or endorsed by either (i) a bank or a savings and loan association organized and supervised under federal or

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

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

7.3.4 Corporate Debt Instruments

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

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

7.3.5 Repurchase Agreements

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

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

7.3.6 Money Market Funds

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

7.3.6.2 Percentage Limit: 100% in total.

7.3.7 Canadian Treasury Bills

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

7.3.7.2 Percentage Limit: 25% in total.

7.3.8 Canadian Agency Securities

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

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

7.3.9 Mortgage-Backed Securities

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

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

7.3.10 Asset Backed Securities

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

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

7.3.11 Municipal Obligations

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

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

7.3.12 Supranational Organizations or International Agencies

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

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

8.0 Endowment Accounts

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

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

8.2.1 Money Market Funds

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

8.2.1.2 Percentage Maximum: 30% in total.

8.2.1.3 Percentage Minimum Limit: none.

8.2.2 Domestic and International Equities

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

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

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

8.2.3 Domestic and International Fixed Income

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

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

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

8.2.4 Alternative Investments

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

8.2.4.2 Percentage Maximum: 25% in total.

8.2.4.3 Percentage Minimum: none.

9.0 Operating Accounts

9.1 Investment Objectives. State agencies and other public authorities maintain various operating accounts with the intent of segregating such funds for accounting and reporting purposes. In addition, operating accounts may be created by the State to meet particular purposes and/or to comply with state statutes, bond trust agreements and/or Federal guidelines. The investment objectives with respect to such funds are to ensure safety and maximize return while providing for the liquidity requirements specifically identifiable to the use of such funds.

9.2 Maturity Restrictions. Unless otherwise determined by the Board, the maximum maturity for any investment of State Funds in the Operating Accounts shall be two years from the date of settlement. In some circumstances, State Funds in an Operating Account may be set aside to fund a known, specific future liability; in such cases, the Board grants OST the discretion to set the maturity restrictions with respect to securities purchased with such funds to correspond to the due date of the corresponding liability. **9.3 Permissible Investments and Percentage of Account Limitations.** Unless otherwise determined by the Board, Operating Accounts shall be governed by the Permissible Investment and Percentage of Account Limitations for the Liquidity Accounts set out in subsections 6.2 and 6.3.

10.0 Settlement Accounts

10.1 Investment Objectives. State Funds in the Settlement Accounts remain for only a short period of time before transfer to a Collection and Disbursement Account. The primary investment objectives are therefore safety and liquidity of such funds; return is a secondary priority. OST may, consistent with these investment objectives, minimize credit risk associated with demand deposit account balances at Merchant Banks through same-day money market mutual fund sweep products in accordance with subsection 5.2.2. End-of-day ledger balances shall be secured as provided in Section 5.2.1.

10.2 Permissible Investments. Merchant Banks shall maintain State Funds in either collateralized demand deposit accounts or open-end money market mutual funds, in each case, subject to the provisions of subsections 5.2.1 and 5.2.2, respectively, in order to mitigate the risk of State Funds being exposed to the credit risk of such financial institutions.

11.0 Restrictions & Violations

11.1 Investment Restrictions. Notwithstanding any other provision, none of the banks or managers engaged to manage or invest State Funds may:

11.1.1 Purchase any securities other than those expressly permitted under Sections 5.0 – 10.0 of these Guidelines;

11.1.2 Make investments for the purpose of exercising control or management of an issuer;

11.1.3 Purchase any securities on margin, except for use of short-term credit necessary for clearance of purchases and sales of portfolio securities;

11.1.4 Make short sales of securities or maintain a short position or write, purchase or sell puts, calls, straddles, spreads or combinations thereof;

11.1.5 Make loans to other persons, other than in connection with repurchase agreements as provided herein;

11.1.6 Mortgage, pledge, hypothecate or in any manner transfer as security for indebtedness any securities owned or held;

11.1.7 Invest in securities with legal or contractual restrictions on resale or for which no readily available market exists (except for repurchase agreements or variable rate master demand notes as provided herein and, if authorized under applicable U.S. Securities and Exchange Commission rules and regulations, 144a private placements considered not to be illiquid, but, instead, readily marketable by issuing dealers);

11.1.8 Act as an underwriter of securities on behalf of the State of Delaware; or

11.1.9 Buy or sell any authorized investment when it is a party or any related or affiliated party in the transaction on both sides.

11.2 Purchases in Violation of Guidelines. In the event that a bank or manager purchases any security that at the time of purchase violates Sections 5.0 – 10.0, the bank or manager shall remove the security from the State's portfolio as soon as possible and will bear all costs associated with the purchase and sale of such security. The bank or manager shall further ensure that the State recognizes no investment gain or loss on the purchase and sale of such security and/or shall effect such transactions as shall be necessary to eliminate any such gain or loss on the books and records of the State's Account with such bank or manager. A bank or manager shall report immediately any such violation and the action(s) taken to correct such violation to OST.

11.3 Holding Impermissible Securities Following a Downgrade. In the event that a bank or manager holds any security that complied with Sections 5.0 – 10.0 at the time of purchase, but which ceases to qualify as a permissible investment as the result of a downgrade, the bank or investment manager shall remove the security from the State's portfolio immediately without any consideration as to the investment gains or losses occasioned thereby. In such case, the State shall bear all costs associated with the purchase and sale of such security and shall recognize any investment gain or loss on such transactions on the books and records of the State's Account with such bank or manager. A bank or manager shall report immediately any such violation and the action(s) taken to correct such violation to OST.

11.4 Holding Impermissible Securities Following a Drawdown. In the event that a manager's account exceeds the percentage of account limitations set forth in Sections 5.0 - 10.0 hereof as the result of a portfolio withdrawal, the manager shall provide to OST within two (2) business days, a detailed plan for remediation of the allocation to within the permissible percentage of account limitation. Such plan shall include: any expected pay-downs on structured securities, expected maturities and expected cash flow items. The manager and OST shall work together to determine a prudent path for remediation, with care taken to manage the overall portfolio risk and implications of any book gains or losses within the portfolio.

11.5 Mutual or Commingled Fund Exceptions to Guidelines. The Board recognizes that (i) mutual funds and other types of commingled investment vehicles can provide, under some circumstances, lower costs and better diversification than can be obtained with a separately managed fund pursuing the same investment objectives and (ii) such funds cannot customize their investment policies to conform to the guidelines set out herein. In such cases, the policies of such funds shall supersede these guidelines and are exempt from the policies and restrictions specified herein.

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Revised August 12, 2015

Revised August 10, 2016

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Revised December 4, 2019

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

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

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

23 DE Reg. 297 (1/01/20)

APPENDIX C: FORM OF PROFESSIONAL SERVICES AGREEMENT

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

WHEREAS, in February 2020, OST, on behalf of itself and the Board, issued a formal Request for Proposals (the “RFP”) pursuant to the State Procurement Code seeking proposals from qualified firms to provide investment management services to OST, the Board and its committees;

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

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

WHEREAS, OST, on behalf of itself and the Board, and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

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

1. Services and Term.

- 1.1. Vendor shall provide to OST, the Board and its committees those services as set forth herein and as specified on the Statement of Work attached hereto as **Exhibit 1** (collectively, the “Services”). Vendor shall provide all Services in a fiduciary capacity and in accordance with the Project Schedule attached hereto as **Exhibit 3**.
- 1.2. The initial term of this Agreement shall begin on the date this Agreement is fully executed, or as may be otherwise agreed upon by the parties, and shall extend for five years from that date. OST has three one-year extension options. OST, in its discretion, may exercise each option at any time prior to the expiration of the initial or extended term, as the case may be, subject only to Board approval of any such extension.
- 1.3. Vendor shall meet and confer with OST, the Board and/or any committee of the Board at such times and places as OST, the Board or a committee may reasonably request. Vendor, if requested by OST, shall participate in meetings with other State agencies concerning Investment-related issues. Vendor shall keep OST staff informed of progress and provide updates on the status of the Services. This interface shall include regular telephone communication, exchange of written data and analysis and other interaction as requested by OST.

2. Payment for Services and Expenses.

- 2.1. OST will pay Vendor for the performance of Services in accordance with **Exhibit 2**.
- 2.2. OST’s obligation to pay Vendor for the performance of Services will not exceed the annual fixed price and/or rates and limits set forth on **Exhibit 2**. Vendor is solely responsible for

ensuring that all Services are completed for the agreed upon price and/or rates and within any applicable cap. Annual fees and/or rates shall be fixed for the initial term of the Agreement and, at OST's option, shall remain fixed for any extension period.

- 2.3. Unless otherwise agreed, all payments will be sent to Vendor's identified address on record with OST.
- 2.4. Vendor shall submit invoices to OST in arrears on a monthly basis. Services provided for a fixed annual price shall be prorated and billed monthly. OST agrees to pay undisputed amounts within 30 days of receipt. In the event that OST disputes all or any portion of an invoice, OST agrees to provide Vendor with a detailed statement of OST's position on the invoice, or disputed portion of the invoice, within 30 days of receipt.
- 2.5. All expenses incurred in the performance of the Services are Vendor's responsibility. Vendor shall not be reimbursed for any expenses incurred by Vendor in the performance of the Services, including, but not limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.6. OST shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable by Vendor as a consequence of this Agreement.
- 2.7. OST shall have the right to setoff or subtract from any payment to be made to Vendor all damages, costs and expenses caused by Vendor's breach of the Agreement, or Vendor's negligence, gross negligence or other tortious or illegal conduct in connection with the provision of Services hereunder, to the extent such damages, costs and expenses have not otherwise been reimbursed by Vendor.
- 2.8. Invoices shall be submitted electronically to OST's Assistant Debt and Cash Manager,
- 2.9. Stephen McVay at Stephen.McVay@delaware.gov with a copy to Treasury_Investment_Services@delaware.gov.

3. [Reserved.]

4. Responsibilities of Vendor.

- 4.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services. In performing the Services, Vendor shall follow practices consistent with generally accepted professional and technical standards and comply with all applicable federal, state and local laws, ordinances, codes and regulations.
- 4.2. Vendor shall be responsible for ensuring that all Services and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the State's Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/> and as modified from time to time by DTI during the term of this Agreement. If any Service or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (a) replace it with a conforming equivalent or (b) modify it to conform to DTI standards. Vendor shall be liable and indemnify the State and its officers, employees and attorneys for all liability, suits, actions or claims, together with all reasonable

costs and expenses (including attorneys' fees), incurred by the State or its agents or employees resulting from or attributable to Vendor's failure to comply with DTI standards and requirements.

- 4.3. [Reserved.]
- 4.4. It shall be Vendor's duty to assure that Vendor does not compromise the security, confidentiality, or integrity of information owned or maintained by the State. In providing Services, Vendor will meet or exceed the standards set forth in the Top 20 Critical Security controls located at: <http://www.sans.org/critical-security-controls/>.
- 4.5. Vendor shall be responsible for all security breaches caused by its employees and contract employees, its subcontractors, and the employees and contract employees of its subcontractors. Vendor shall indemnify and hold harmless the State and its officers, employees and attorneys from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) arising out of such breaches. In addition to all rights and remedies available to it in law or in equity, the State may offset against and subtract from any payment to be made to Vendor any damages, costs and expenses caused by any such breach.
- 4.6. Multifunction peripherals must be hardened when used or connected to the State's network.
- 4.7. Electronic information storage devices (hard drives, tapes, diskettes, compact disks, USB, multifunction peripherals, *etc.*) shall be disposed of in a manner corresponding to the classification of the stored information, up to and including physical destruction.
- 4.8. [Reserved.]
- 4.9. [Reserved.]
- 4.10. It shall be the duty of Vendor to assure that all Services and deliverables are technically sound and in conformance with all applicable federal, state and local statutes, codes, ordinances, resolutions and other regulations applicable to the Services. Vendor will not provide access to software, or produce work product, that violates or infringes on any copyright, trademark, patent or other intellectual property rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in the software or work product and shall indemnify the State and its officers, employees and attorneys for all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), incurred by the State or its officers, employees or attorneys resulting from or attributable to Vendor's failure to comply with this Section.
- 4.11. OST's review, approval, acceptance, or payment for any Services shall not be construed to operate as an admission or acknowledgement of any fact or circumstance, or a waiver of any rights under this Agreement or otherwise, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages caused by Vendor's breach or negligent performance or failure to perform under this Agreement.
- 4.12. Vendor shall appoint a senior employee who will manage the performance of Services and act as the single point of contact to OST.

- 4.13. Upon receipt of written notice from OST that an employee of Vendor is unsuitable for good cause, Vendor shall remove such employee from the performance of Services and substitute in his/her place an employee suitable to OST.
- 4.14. Unless legally prohibited, Vendor shall promptly notify OST in writing of any investigation, examination or other proceeding involving Vendor, or any key personnel or designated staff of Vendor, including a contract employee or a subcontractor, or any key personnel or designated staff of a subcontractor, commenced by any regulatory or law enforcement agency and involving allegations of fraud or illegal conduct, or a data breach.
- 4.15. Vendor agrees that its senior employee and other key personnel or designated staff will cooperate with OST in the performance of Services and will be available for consultation with OST upon reasonable request.
- 4.16. [Reserved.]
- 4.17. [Reserved.]
- 4.18. Vendor has or will retain such employees as it may need to perform the Services.
- 4.19. Vendor will not use OST's, the Board's or the State's name, either express or implied, in any of its advertising or sales materials without OST's prior written consent.
- 4.20. Vendor represents that it is properly licensed, registered and authorized to transact business and perform Services in the State.
- 4.21. Vendor will provide to OST audited or unaudited financial statements, as requested by OST.
- 4.22. Vendor shall be independent and shall provide advice and recommendations to OST and the Board free of any conflicts of interest and solely in the best interest of the State.

5. OST Responsibilities/Representations.

- 5.1. OST agrees that its officers and employees will cooperate with Vendor in the performance of Services and will be available for consultation with Vendor upon reasonable request.
- 5.2. OST shall pay for the Services as provided on **Exhibit 2**, subject to review for compliance with and the terms of this Agreement.

6. Ownership of Work Product and Data and Documents.

- 6.1. All materials, information, documents, reports and other work product, whether finished, unfinished, or draft, developed, prepared or completed by Vendor relating to the Agreement shall become the property of the State and shall be delivered upon request by OST. The State shall have the right to reproduce and disclose all work product related to this Agreement. The State's rights under this Section shall survive termination of the Agreement.

6.2. The State shall have and retain title and interest to all data and documents related to this Agreement, including Vendor work product and data and documents electronically stored by Vendor. Upon termination of the Agreement, and for a period of six (6) months thereafter, OST shall have the right to request and shall, at OST's option and at Vendor's expense, be provided with copies of all data and documents electronically stored by Vendor related to the Agreement. Promptly after such six (6) month period, all State data and documents shall be destroyed or retained in accordance with Section 7.8.

7. Confidential Information of the State.

7.1. "Confidential Material," as used herein, means all documents and data that contain confidential commercial, financial, consumer, or other confidential information of the State, whether or not such agreements or other documents are marked "confidential" or otherwise designated as confidential by OST.

7.2. Confidential Material shall be used by Vendor solely for purposes of executing its duties and obligations under the Agreement. Vendor may disclose Confidential Material only to those Vendor employees who have a need to access Confidential Material in the scope of their employment for Vendor, and who have been informed, understand and acknowledge in writing that Confidential Material is highly sensitive and confidential and must be held in strictest confidence.

7.3. Confidential Material shall not be copied or reproduced without the express written permission of OST, except for such copies as may reasonably be required for Vendor to execute its duties and obligations under the Agreement. Except as contemplated by the Agreement, Vendor shall not store or aggregate in a data base or other electronic storage means any Confidential Material; provided, however, that Vendor is permitted to store Confidential Material in physical or electronic files in accordance with this Section 7 while executing its duties under the Agreement and for a reasonable period of time thereafter, after which the Confidential Materials, including all physical and electronic copies, shall be destroyed or retained in accordance with Section 7.8.

7.4. Except as expressly permitted in this Section 7, Confidential Material shall not be disclosed to any individuals or third parties without the prior written consent of OST, unless such disclosure is required by law. Vendor shall immediately notify OST in writing of Vendor's receipt of a court order, subpoena or discovery requests seeking or ordering the production, disclosure or inspection of any Confidential Material. Vendor shall, at the request of OST, object to any such order, subpoena or discovery and shall take all other measures that may reasonably be necessary to protect against the unwarranted production, disclosure or inspection of Confidential Material. In the event disclosure of Confidential Material is compelled or otherwise required by law, Vendor shall mark all documents submitted in connection with any such disclosure so as to indicate the confidential nature of the material and OST's interest therein.

7.5. This Section 7 shall not restrict the disclosure or use of Confidential Material that:

- a. is in the public domain at the time of disclosure or thereafter enters the public domain through no breach of the Agreement;
- b. is in the possession of Vendor without restrictions when received;

- c. has been lawfully obtained or is lawfully obtainable without restrictions from a source other than OST, the Board or the State through no breach of the Agreement;
 - d. has been developed independently by Vendor and without reliance upon Confidential Material.
- 7.6. Vendor shall take reasonable steps to restrict access to and otherwise safeguard the confidentiality and integrity of Confidential Material at all times, including, without limitation, the implementation of electronic security procedures and other measures designed to ensure that all Confidential Material is properly stored, and password protected at all times.
- 7.7. Vendor shall immediately disclose to OST the discovery of any security breach or suspicious intrusion involving Confidential Material and shall identify the type and amount of Confidential Material that was compromised or disclosed.
- 7.8. Within six (6) months from the termination of the Agreement, all Confidential Material, regardless of form, shall be permanently deleted or destroyed in accordance with all applicable law, orders, rules and regulations and industry best practices. Any electronic data or documents deleted under this Section 7.8 shall be permanently deleted and shall not be recoverable, according to the National Institute of Standards and Technology's approved methods. If requested, Vendor shall provide a destruction certificate to OST listing the type and contents of electronic records or physical documents destroyed or permanently deleted under this Section 7.8. Notwithstanding the foregoing, Vendor may, subject to Vendor's confidentiality obligations under this Agreement, retain copies of State data and documents to the extent required by applicable state or federal law, regulations, rules, or orders or Vendor's document retention policy.
- 7.9. The State shall have no obligation to disclose Confidential Material. OST may, in its discretion, provide or refuse to provide Confidential Material requested by Vendor.
- 7.10. Vendor understands and agrees that the State may suffer irreparable harm in the event that Vendor fails to comply with its obligations hereunder and that monetary damages may not be adequate to compensate the State for such breach. Vendor agrees that the State, in addition to other remedies available to it at law or in equity for actual damages, shall be entitled to seek injunctive relief to enforce the terms of this Section 7.
- 7.11. Vendor's confidentiality obligations shall survive termination of the Agreement.

8. Warranty.

- 8.1. Vendor agrees to correct or re-perform any Services not in compliance with this Agreement in a timely manner.
- 8.2. Third-party products within the scope of this Agreement, if any, are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor in connection with the provision of the Services, if any, Vendor shall pass through or assign to the State all rights Vendor obtains from the manufacturers and/or vendors of such products

and services (including warranty and indemnification rights), to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless OST, the Board, the State and their respective officers, members, employees and attorneys (“Indemnified Parties”) from any and all liability, suits, actions, claims or damages, together with all reasonable costs and expenses (including attorneys’ fees), arising out of Vendor’s breach of the Agreement, or the negligent, reckless, intentional or other tortious, fraudulent, illegal, or unlawful conduct of Vendor or any subcontractor, or their respective officers, employees, contract employees or agents, arising out of or related to this Agreement (“Claims”).
- 9.2. If OST notifies Vendor in writing of a Claim against an Indemnified Party, including, without limitation, any Claim based on Vendor’s disclosure of or failure to safeguard any personal financial or other Confidential Material, Vendor will defend such Claim at Vendor’s expense if so requested by OST, in OST’s sole discretion. Vendor will pay any costs or damages that may be finally awarded against an Indemnified Party.
- 9.3. Except for fees that may be due and owing as set forth in Section 2 above and **Exhibit 2** hereto, and notwithstanding anything to the contrary in this Agreement, neither OST, the Board or the State, nor any officers, members, employees or attorneys of the foregoing, shall have any liability to Vendor or any other party for fees (including attorneys’ fees), expenses, suits, actions, claims or damages, whether direct or indirect, compensatory or punitive, actual or consequential, in or for actions, claims, causes of action or rights, including alleged indemnification rights, arising out of or related in any way to this Agreement.
- 9.4. Notwithstanding anything to the contrary herein, no provision of this Agreement shall constitute or be construed as an indemnification obligation in favor of Vendor, or a waiver or limitation of any right of OST, the Board or the State that may exist under applicable law.
- 9.5. Notwithstanding anything to the contrary herein, to the extent available under applicable law, OST, the Board and the State, and their respective officers, members, employees and attorneys, expressly reserve all rights, claims, arguments, defenses and immunities, including, without limitation, claims or defenses based on sovereign immunity, qualified immunity and other statutory or common law rights, claims, defenses or immunities; provided, however, that Vendor shall have the right to seek to enforce this Agreement in the courts of this State.

10. Insurance.

- 10.1. Vendor shall maintain the following insurance during the term of this Agreement:
 - a. Worker’s compensation and employer’s liability insurance in accordance with applicable law;
 - b. Comprehensive general liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate;
 - c. Professional liability - \$5,000,000 per occurrence/\$5,000,000 per aggregate;

- d. Miscellaneous Errors and Omissions—\$1,000,000.00 per occurrence/\$3,000,000 per aggregate;
 - e. Automotive liability insurance covering all automotive units used in the work with limits of not less than \$100,000 for each person and \$300,000 for each accident as to bodily injury and \$25,000 as to property damage to others; and
 - f. Cyber Liability – Vendor must maintain cyber security liability insurance coverage with limits of \$[in an amount TBD] aggregate for loss resulting from a data breach. The policy shall be issued by an insurance company with an A.M. Best Rating of A-VII and shall remain in place for the term of the Agreement. At a minimum, the policy must include coverage for any regulatory penalties and fines (to the extent insurable). Vendor shall be responsible for any deductible or self-insured retention contained in the insurance policy.
 - g. Excess/Umbrella policy - Excess/Umbrella \$[in an amount TBD] total (sits above underlying worker’s compensation and employer’s liability, general liability, and automotive liability).
- 10.2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered to OST.
- 10.3. Before any work is performed pursuant to this Agreement, certificate of insurance and/or copies of the insurance policies specified in Section 10.1 shall be provided to OST. The certificate holder is as follows:
- Office of the State Treasurer**
820 Silver Lake Blvd., Suite 100
Dover, DE 19904
- 10.4. In no event shall OST, the Board or the State, or their respective officers, members, employees or attorneys, be named as an additional insured on any policy required under this Agreement.

11. Independent Contractor.

- 11.1. It is understood that in the performance of the Services, Vendor is an independent contractor, not an agent or employee of OST, the Board or the State, and shall furnish such Services in its own manner and method, except as required by this Agreement.
- 11.2. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the Services; provided, however, that Vendor will, subject to scheduling and staffing considerations, attempt to honor OST’s request for specific individuals.
- 11.3. Vendor shall be solely responsible for, and shall indemnify, defend and hold OST, the Board and the State, and their respective officers, members, employees and attorneys, harmless from all matters relating to the payment of Vendor’s employees, contract employees, subcontractor

or subcontractor's employees, including compliance with Social Security withholding and all other wages, salaries, benefits and taxes of any nature whatsoever.

- 11.4. Vendor acknowledges that Vendor and any agents or employees employed or contracted by Vendor shall not, under any circumstances, be considered employees of OST, the Board or the State, and that they shall not be entitled to any of the compensation, benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, pension benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits.
- 11.5. Vendor shall be responsible for providing liability insurance for its personnel and agents.
- 11.6. As an independent contractor, Vendor has no authority to bind or commit OST, the Board or the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, or fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

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

13. Termination.

- 13.1. This Agreement may be terminated by either party for default, which shall mean the failure of the other party to fulfill a material obligation under this Agreement, through no fault of the terminating party, but only after the other party is given:
 - a. Not less than 14 calendar days' written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- 13.2. This Agreement may be terminated in whole or in part by OST for its convenience, but only after Vendor is given 30 calendar days' written notice of intent to terminate.
- 13.3. If termination is effected, OST will pay Vendor that portion of compensation earned for Services provided as of the effective date of termination, but:
 - a. No amount shall be allowed for anticipated profit on unperformed Services or other work;
 - b. Any payment due to Vendor at the time of termination may be adjusted or reduced to the extent of the State's offset or recoupment rights; and

- c. In the event Vendor ceases conducting business, OST shall have the right to make an unsolicited offer of employment to any officers or employees of Vendor.
- 13.4. In connection with any notice issued under this Section 13, OST may immediately retain another vendor to perform the Services. Vendor shall at all times cooperate in the transition and shall perform such Services and additional services as OST shall determine are necessary or appropriate to enable the transition of work to a successor vendor or vendors. Vendor's obligation to provide transition services shall survive termination and shall continue until such date as is communicated in writing to Vendor that such Services or additional services are no longer needed.
- 13.5. If after termination for breach it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for convenience.
- 13.6. The termination of this Agreement shall not terminate indemnification or confidentiality rights or obligations, or any other rights or obligations that are intended to or customarily extend beyond termination.
- 13.7. The rights and remedies of OST provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.8. Gratuities.
- a. OST may, by written notice to Vendor, terminate this Agreement without liability if it is found that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of OST, the Board or the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
 - b. In the event this Agreement is terminated as provided in Section 13.8.a, the State shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
 - c. The rights and remedies of OST, the Board and the State provided in Section 13.8 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- 13.9. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. If such funds are not so appropriated, (a) OST may immediately terminate this Agreement without liability, and (b) the Agreement shall be terminated without liability as to any obligation of OST requiring the expenditure of money for which no specific appropriation is available.

14. Assignment; Subcontracts.

- 14.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of OST shall be void.

- 14.2. Vendor's employees shall perform all Services, unless OST consents in writing to Vendor's request to use temporary staff, independent contractors or a subcontractor. Neither approval by OST of any such request, nor OST's acceptance of any software, deliverable or payment of any invoice, shall relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the Services. All temporary staff, independent contractors and subcontractors shall adhere to and be bound by the terms of this Agreement, including all exhibits.
- 14.3. Vendor shall be and remain liable for all damages to OST, the Board and the State caused by the negligent performance or non-performance of work under this Agreement by any use temporary staff, independent contractors or a subcontractor.
- 14.4. The compensation otherwise due to Vendor pursuant to **Exhibit 2** shall not be affected by OST's approval of Vendor's request to use temporary staff, independent contractors or a subcontractor.

15. Complete Agreement.

- 15.1. This Agreement and its exhibits, which are incorporated herein by reference, shall constitute the entire Agreement between OST and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement. Notwithstanding the foregoing, or any other provision of this Agreement, all oaths, representations and warranties made by Vendor through participation in the RFP process, including, without limitation, all written representations made by Vendor in Vendor's proposal concerning Vendor's experience and capabilities, shall survive execution and become part of the Agreement.
- 15.2. If the scope of any provision of this Agreement is too broad in any respect to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 15.3. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.
- 15.4. Each exhibit to this Agreement, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement, modify and supersede the terms and conditions of this Agreement. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter of this Agreement.

16. Miscellaneous Provisions.

- 16.1. Except for fees that may be due and owing as set forth in Section 2 above and **Exhibit 2** hereto, Vendor shall solely bear the costs incurred in the performance of this Agreement.
- 16.2. Neither this Agreement nor any exhibit may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom enforcement is sought.
- 16.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 16.4. Vendor represents and covenants that it presently has no interest, and that it will not acquire any interest, direct or indirect, that conflicts or would conflict in any manner or degree with the performance of Services required under this Agreement. Vendor will immediately notify OST of any material change to such representation that arises during the term of the Agreement, including any extension period.
- 16.5. Vendor acknowledges that OST, the Board and the State have obligations to ensure that public funds and resources are not used to subsidize private discrimination. Vendor recognizes that its refusal to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, may result in OST declaring Vendor in breach of the Agreement, terminating the Agreement without liability and/or taking such additional action as may be warranted under the circumstances.
- 16.6. Vendor warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, OST shall have the right to terminate this Agreement without liability.
- 16.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either party.
- 16.8. At the option of OST, the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between officials or executives who have authority to settle the controversy. All offers, promises, conduct and statements, in each case relating to dispute resolution, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible in any proceeding involving the parties; provided, however, that evidence that is otherwise admissible or discoverable may not be rendered inadmissible merely because it was the subject of discussion in the course of negotiation.
- 16.9. Any disputes, claims or controversies arising out of or relating to this Agreement that are not resolved through resolution pursuant to Section 16.8, may be submitted to mediation if OST so elects. Any such proceedings held pursuant to this provision shall be governed by the State's laws, and venue shall be in this State. The parties shall maintain the confidential nature

of the proceedings and shall keep the terms of any resulting settlement or award confidential to the extent permissible under applicable law. Each party shall bear its own costs of mediation, including attorneys' fees and half of the mediator's fees and expenses.

- 16.10. The rights and remedies of OST and the State provided for in this Agreement are in addition to any other rights and remedies provided by law or at equity.
- 16.11. Neither party to this Agreement shall be liable for damages resulting from delayed or defective performance of its obligations under this Agreement when such delays or defective performance arise out of causes beyond the reasonable control and without the negligence or willful misconduct of the party.
- 16.12. This Agreement, including all exhibits, and its contents, including pricing information, is a public document subject to mandatory disclosure under the State's Freedom of Information Act, 29 *Del. C.* § 10001-10007. In the event that OST is required by law (any statute, governmental rule or regulation, or judicial or governmental order, judgment or decree) to disclose to the public any information or document reasonably designated as "confidential" by Vendor, OST will, to the extent reasonably practicable, give Vendor prior written notice of such disclosure or potential disclosure.
- 16.13. The provisions of this Agreement are for the sole benefit of the parties hereto. This Agreement confers no rights, benefits or claims upon any person or entity not a party hereto, including any permitted independent contractor or subcontractor approved by OST.
- 16.14. The terms of the RFP and any addenda or answers to RFP questions (the "RFP Documents") are incorporated herein by reference and govern the Services and Vendor except to the extent the terms of the RFP Documents conflict with the terms of this Agreement. When construing or interpreting the Agreement (a) the terms of the exhibits shall control and take precedence over the main text of the Agreement; and (b) the terms of the Agreement, including all exhibits, shall control and take precedence over the RFP Documents.

17. Assignment of Antitrust Claims.

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

18. Governing Law.

This Agreement shall be governed by and construed in accordance with Delaware law, without regard to conflict of laws rules or principles. Vendor consents to jurisdiction and venue in this State.

19. Notices.

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

If to OST:
Attn:

If to Vendor:
Attn:

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

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

Signature

Name

Title

Date

[VENDOR]

Signature

Name

Title

Date

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

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

Exhibit 2 – Payment Schedule

In consideration of the services provided by Vendor, subject to the payment terms set forth in Section 2 of the Agreement, the State shall pay Vendor an annual fee amount (the “Fee”) in quarterly installments based on the average daily market value (as reported by the custodian) of assets under Vendor’s direct management (the “Assets”) for the applicable quarter according to the following schedule:

Average of daily market value of Assets plus accrued interest =	Annual fees (basis points)
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OST shall cause the State’s custodian to provide Vendor with the daily market value of the Assets plus accrued interest for the applicable billing period within three (3) business day at the end of each month. Immediately following the billing period (no later than ten business days), Vendor shall provide OST with a fee invoice, via email to the Designated Contact, consistent with the forgoing and describing in reasonable detail the manner in which such fees were calculated. After approval, OST will instruct the custodian to pay Vendor's fees directly from the account.

- **Exhibit 3 – Project Schedule**

PROPOSED PROJECT SCHEDULE

Task/Milestone	Date
Fully Executed Agreement	June 15, 2020
Implementation Period	June 15, 2020 – June 30, 2020
Funding New Accounts	July 1, 2020

DRAFT