

CONTRACT BETWEEN
THE DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
AND
DELOITTE CONSULTING, LLP

This Contract is entered into between the STATE OF DELAWARE, DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES, hereinafter referred to as the DEPARTMENT, and DELOITTE CONSULTING, LLP, 2601 MARKET STREET, 2ND FLOOR, HARRISBURG, PA 17110, ATTENTION: FACTS II - NICOLE FULLER, PRINCIPAL, hereinafter referred to as the CONTRACTOR.

The Contract between the parties listed above shall consist of this document, the Statement of Agreement, Attachment A (Description of Services), and Attachment B (Budget and Narrative). These items contain all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understanding, oral or otherwise, regarding the subject matter of this Contract, shall be deemed to exist or to bind any of the parties hereto.

The maximum amount of this Contract is governed by the annual amount encumbered in the CONTRACTOR'S name on a State of Delaware Purchase Order. This Contract is considered a Unit Cost Contract with one or more specific dollar amounts presented in Attachment B of this Contract payable to the CONTRACTOR by the DEPARTMENT for each unit of service provided.

The period of this Contract shall commence on May 7, 2012, subject to the approval of a purchase order by the Secretary of the Department of Finance, and terminate on January 16, 2015.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officials.

FOR THE CONTRACTOR

Nicole G. Fuller April 26, 2012
Authorized Contractor Signatory Date

Nicole G. Fuller April 26, 2012
Authorized Contractor Signatory Date

FOR THE DEPARTMENT

[Signature] 4/30/12
Vivian L. Rapposelli, Secretary
Department of Services for Children,
Youth and Their Families Date

Karryl H. McManus 4/27/12
Karryl McManus, Director
Division of Management Support Services Date

Business License No.

E.I. No. 06-1454513

STATEMENT OF AGREEMENT
THE DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

WHEREAS, the DEPARTMENT has determined that:

The services described herein are required by the DEPARTMENT;

The CONTRACTOR possesses the necessary experience and skills and is equipped to efficiently and effectively perform any duties and assignments required to provide such services;

The CONTRACTOR is willing to provide such services and has provided a proposed budget or unit cost schedule for these services;

The CONTRACTOR's proposal and budget or unit cost schedule are acceptable;

NOW, WHEREFORE, in consideration of the foregoing recitals and mutual covenants contained herein, the PARTIES do hereby agree to the following:

ARTICLE I: DUTIES OF THE PARTIES

A. Duties of the DEPARTMENT

The DEPARTMENT shall:

1. Contract Manager. Identify a Contract Manager who shall be the primary program liaison with the CONTRACTOR on behalf of the DEPARTMENT.
2. Policies and Procedures. Provide the CONTRACTOR with the information and any other written documentation held or developed by the DEPARTMENT that the CONTRACTOR may reasonably request in order to perform its duties hereunder.
3. The rights and remedies of DEPARTMENT provided for in this Agreement are in addition to any other rights and remedies provided by law, except for the exclusive remedy set forth in Article VI(B) below, and subject to the limitation on damages set forth in Article XI below.
4. Approve each Deliverable (as defined in Article IV(A) below) that conforms in all material respects with the requirements therefor set forth in the requirements matrix in Attachment A or as otherwise agreed by the DEPARTMENT and CONTRACTOR in writing ("Specifications"). Within ten (10) work days from its receipt of a Deliverable, or such other period as may agreed to by the parties in writing or as specified in the SOW (as defined in Article I, Section B(9) below), the DEPARTMENT shall provide CONTRACTOR with (i) written approval of such Deliverable or (ii) a written statement which identifies in reasonable detail, with references to the applicable Specifications, all of the deficiencies preventing approval (the "Deficiencies"). For purposes of this Agreement, "work day" shall mean any day that is not a State of Delaware holiday or any Saturday or Sunday. CONTRACTOR shall have thirty (30) days (or such other period agreed upon in writing by the parties) from the date it receives the notice of Deficiencies to complete corrective actions in order for such Deliverable to conform in all material respects to the applicable Specifications. The DEPARTMENT shall complete its review of the corrected Deliverable and notify CONTRACTOR in writing of acceptance or rejection in accordance with the foregoing provisions of this Section. Notwithstanding the foregoing provisions of this Section, approval of a Deliverable shall be deemed given by the DEPARTMENT if the DEPARTMENT has not delivered to CONTRACTOR a notice of Deficiencies for such Deliverable prior to the expiration of the period for DEPARTMENT review thereof as set forth in this paragraph, or if the DEPARTMENT uses the Deliverable in production. To the extent that a Deliverable has been approved by the DEPARTMENT at any stage of CONTRACTOR's performance, CONTRACTOR shall be entitled to rely on such approval for purposes of CONTRACTOR's subsequent performance. In the event an approved Deliverable differs from the Specifications for such Deliverable, the Specifications shall be deemed modified to conform to such approved Deliverable.
5. In addition to the DEPARTMENT's responsibilities as set forth in Attachment A, cooperate with CONTRACTOR in the performance by CONTRACTOR of the Services, including, without limitation (i) providing CONTRACTOR with adequate working space, equipment and facilities and timely access to data, information, and personnel of the DEPARTMENT; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional system infrastructure environment which will support the Services and allow CONTRACTOR and the DEPARTMENT to work productively; and (iv) promptly notifying CONTRACTOR of any issues, concerns or disputes with respect to the Services. The DEPARTMENT shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of all data and information provided to CONTRACTOR for purposes of the performance of the Services. The DEPARTMENT acknowledges and agrees that CONTRACTOR's performance is dependent on the DEPARTMENT's timely and effective satisfaction of the DEPARTMENT's responsibilities under this Agreement and timely decisions and approvals of the DEPARTMENT in connection with the Services.

The Services may include advice and recommendations, but CONTRACTOR will not make any decisions on behalf of the DEPARTMENT in connection with the implementation of such advice and recommendations.

B. Duties of the CONTRACTOR

The CONTRACTOR shall:

1. CONTRACTOR shall be responsible for the professional quality, timely completion, and coordination of all Services (as defined in subparagraph (10) below) furnished by CONTRACTOR, its subcontractors and its and their principals, officers, employees and agents in accordance with this Agreement. In performing the specified Services, CONTRACTOR shall follow practices consistent with generally accepted professional and industry standards. CONTRACTOR shall be responsible for furnishing Deliverables pursuant to this Agreement that comply in all material respects with the applicable standards promulgated by the 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 in accordance with this paragraph. The applicable standards are identified in Appendix 1 of this Agreement (the "DTI Standards"). If any Deliverables furnished pursuant to this Agreement does not conform in all material respects with the DTI Standards, CONTRACTOR shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with such DTI Standards, in accordance with Article I, Section A(4) above. The applicable DTI Standard identified in Appendix 1 can be modified or additional new or existing standards can be added pursuant to the following process: In the event that DTI Standards change or new DTI Standards are added after the effective date of this Agreement or the project changes in a manner that requires an existing but not listed standard to be added, the DEPARTMENT shall provide written notice thereof to CONTRACTOR. If CONTRACTOR is able to comply with the changes or additions to such DTI Standards, the parties will follow the amendment process set forth in this Agreement to address such changes. If CONTRACTOR is unable to comply with the changes or additions to the DTI Standards, the CONTRACTOR will notify the DEPARTMENT in writing and the DEPARTMENT will either agree to contractually adjust CONTRACTOR'S obligations regarding compliance with such changes or additions or terminate this Agreement for convenience in accordance with the terms of this Agreement.
2. SECURITY: Computer, network, and information security is of paramount concern for the State of Delaware and the Department of Technology and Information. The SANS Institute and the FBI have released a document describing the Top 20 Internet Security Threats. The document is available at www.sans.org/top20.htm <<http://www.sans.org/top20.htm>>. CONTRACTOR'S obligations under this Agreement with regard to cyber-security and detection of vulnerabilities will be to use industry-standard procedures to test the Deliverables for such vulnerabilities before delivering them to the DEPARTMENT and to have in place administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of the electronic confidential information that it receives, maintains or transmits on behalf of the DEPARTMENT in connection with this Agreement. The DEPARTMENT shall at all times employ industry-standard virus detection and vulnerability prevention procedures. As CONTRACTOR will not be providing disaster recovery or business continuity services hereunder, the DEPARTMENT shall remain responsible for ensuring proper and adequate back-up and storage procedures. "Personally Identifiable Information" or "PII" means any nonpublic information capable of individually identifying a natural person, in written or electronic form, that is received from, or on behalf of, the DEPARTMENT by CONTRACTOR pursuant to performance of the Services. In the event that CONTRACTOR's engagement leader becomes aware of any unauthorized access to PII received from DEPARTMENT in CONTRACTOR's control, CONTRACTOR shall promptly notify the DEPARTMENT of such unauthorized access and reasonably cooperate with the DEPARTMENT in complying with any DEPARTMENT notification obligations required by applicable law. To the extent that such unauthorized access arises out of CONTRACTOR's negligence, intentional misconduct, or breach of this Agreement, then, to the extent such DEPARTMENT notification is required by applicable law, CONTRACTOR shall reimburse the DEPARTMENT for the reasonable out-of-pocket costs of notifying such affected individuals.
3. Approval by DEPARTMENT of any Deliverables furnished by CONTRACTOR, and/or payment therefor, shall not in any way relieve CONTRACTOR of responsibility for the professional quality of its work as required hereunder nor as a waiver of any of its other rights under this Agreement or of any other cause of action arising out of the performance of this Agreement.
4. CONTRACTOR shall appoint a Project Manager who will manage the performance of services. All of the Services specified by this Agreement shall be performed by the Project Manager, or by CONTRACTOR's associates and personnel under the personal supervision of the Project Manager.
5. Designation of persons for each position is subject to review and approval by DEPARTMENT. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, CONTRACTOR will notify DEPARTMENT promptly and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by DEPARTMENT, not to be unreasonably withheld. If CONTRACTOR fails to make a required replacement within 30 days, DEPARTMENT may terminate this Agreement upon written notice. Upon receipt of written notice from DEPARTMENT that an employee of CONTRACTOR is unsuitable to DEPARTMENT for good cause, CONTRACTOR shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
6. CONTRACTOR shall furnish to DEPARTMENT's designated representative copies of all correspondence to regulatory agencies describing or discussing the Services for review prior to mailing such correspondence, if permitted by applicable law or regulation.

7. CONTRACTOR agrees that its personnel will cooperate with DEPARTMENT in the performance of services under this Agreement and will be available for consultation with DEPARTMENT at such reasonable times with reasonable advance notice as to not conflict with their other responsibilities.
8. CONTRACTOR has or will retain such employees and permitted subcontractors as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State of Delaware or any other political subdivision of Delaware.
9. CONTRACTOR will not use the State of Delaware's name or the DEPARTMENT's name, either express or implied such that a reasonable recipient would realize the identity thereof, in any of its advertising or sales materials without DEPARTMENT's express written consent.
10. Program of Services (and/or Deliverables). Provide the services (the "Services") and Deliverables as set forth in Attachment A, Description of Services (the "SOW"), which is made a part of this Contract.
11. Satisfy Licensure, Certification, and Accreditation Standards. Comply with all applicable State and Federal licensing standards and all other applicable standards as required by this Agreement in performing the Services provided under this Contract.
 - a. Notification of Status Change. The CONTRACTOR shall immediately notify the DEPARTMENT in writing of any change in the status of any accreditations professional or other licenses or certifications in any jurisdiction in which they provide services or conduct business. If this change in status is the result of the CONTRACTOR's accreditation, licensure, or certification being suspended, revoked, or otherwise impaired in any jurisdiction, the CONTRACTOR understands that such change may be grounds for termination of the Contract. CONTRACTOR shall notify the DEPARTMENT of any criminal charges against or criminal investigations of CONTRACTOR.
 - b. By signature on this contract, the CONTRACTOR represents that the CONTRACTOR, and/or its Principals (to the best of CONTRACTOR's knowledge), along with its subcontractors (to the best of its knowledge, and based on the same representation obtained from such subcontractors) and/or assignees under this contract, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded for procurement or non-procurement activities by any Federal government department or agency.
12. Compliance with Laws and Regulations. In performing the Services, the CONTRACTOR is responsible for its compliance with published Federal and State laws and regulations (ie, Health Insurance Portability and Accountability Act (HIPAA) of 1996) pertinent to discharging the CONTRACTOR's duties and responsibilities hereunder.
 - a. Compliance with Drug-Free Work Place Act of 1988. If applicable, the CONTRACTOR agrees to comply with all the terms, requirements, and provisions of the Drug-Free Work Place Act of 1988 as detailed in the Governor's Certification Regarding Drug-Free Work Place Requirements that has been provided to CONTRACTOR by the DEPARTMENT.
13. Confidentiality. Both parties shall establish appropriate restrictions and safeguards against access by unauthorized personnel to all confidential data and records. Confidentiality of all data, records, and information obtained by the CONTRACTOR or DEPARTMENT, including, without limitation, State data and State computer files (as applicable, the "receiving party" from the other (the "disclosing party") shall be governed by applicable Federal and State statutes and regulations, and this Agreement. The receiving party shall not disclose such information to any third party without the disclosing party's consent, using at least the same degree of care as it employees in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The disclosing party hereby consents to the receiving party disclosing such information (subject to applicable statutes and regulations): (i) to permitted subcontractors that are providing services in connection with this Agreement and that have agreed to be bound by confidentiality obligations similar to those in this paragraph, (ii) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or (iii) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the receiving party on a nonconfidential basis from a source that the receiving party believes is not prohibited from disclosing such information to the receiving party, (C) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (D) is developed by the receiving party independently of any disclosures made to the receiving party.
14. CONFIDENTIALITY AND DATA INTEGRITY:
 DTI is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data and State computer files will not be modified by CONTRACTOR without the written authorization of DTI, provided that any such modification which is reasonably required for performance of CONTRACTOR's Services pursuant to this Agreement shall be deemed to be thus authorized. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of such data shall be retained by the State of Delaware and the DTI and subject to the terms of Article I, Section B(13) above. The CONTRACTOR is required to agree to the requirements in the CONFIDENTIALITY AND INTEGRITY OF DATA STATEMENT, attached as Exhibit B, and made a part of this Agreement and to be responsible for compliance therewith by its personnel and permitted subcontractors, and CONTRACTOR shall sign the statement prior to beginning any work.
15. Cooperation with Third Parties. Cooperate fully with any other party, contractor, consultant, or agency identified by the DEPARTMENT in writing as necessary to the performance of this Agreement.

16. Independent Contractor Status.

- a. It is understood that in the performance of the services herein provided for, CONTRACTOR shall be, and is, an independent contractor, and is not an agent or employee of the State of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. CONTRACTOR shall be solely responsible for, and shall indemnify, defend and save the State of Delaware, the DEPARTMENT, its officer or employees harmless from all claims brought by CONTRACTOR's employees for payment of social security, withholding, and all other wages, salaries, benefits, taxes, exactions, and other employment-related payments of any nature whatsoever.
- b. CONTRACTOR acknowledges that CONTRACTOR and any subcontractors, agents or employees employed by CONTRACTOR shall not, under any circumstances, be considered employees of the State of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of the State of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Neither the State of Delaware nor the DEPARTMENT will provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of CONTRACTOR or any of its officers, employees or other agents.
- c. CONTRACTOR shall be responsible for providing liability insurance for its personnel.
- d. As an independent contractor, CONTRACTOR has no authority to bind or commit the State of Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.
- e. Recognize that it is operating as an independent contractor, the CONTRACTOR agrees to indemnify, save, hold harmless and defend the State of Delaware, DEPARTMENT, its officers or employees from any liability that may arise from third party claims (including claims by CONTRACTOR personnel) of bodily injury, death or damage to real or tangible personal property to the extent directly and proximately caused by the CONTRACTOR's negligence or willful misconduct while engaged in the performance of the Services under this Contract.

17. Insurance.

- a. CONTRACTOR shall maintain the following insurance during the term of this Agreement:
 1. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
 2. Commercial General Liability - \$1,000,000.00 per occurrence/\$3,000,000 aggregate, **and**
 3. Medical or Professional Liability - \$1,000,000.00 per claim/\$3,000,000 aggregate; **or**
 4. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, **or**
 5. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
 6. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the performance of the Services with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others or \$1,000,000 combined single limit per occurrence.
- b. CONTRACTOR shall provide thirty (30) days written notice of cancellation or non-renewal, or reduction below the coverage amounts required hereunder, of any such policies.
- c. Before any work is done pursuant to this Agreement, the Certificate of Insurance indicating the required insurance policies, referencing the contract number stated herein, shall be provided to the DEPARTMENT.
- d. In no event shall the State of Delaware or the DEPARTMENT be named as an additional insured on any policy required under this Agreement.

C. Duties of Both PARTIES

1. Communication. Formal communication concerning this Agreement or Services, etc., shall be made via written correspondence between the Contract Managers of both PARTIES. Notice as required under this Agreement nature shall be accomplished via written correspondence between designated officials of both PARTIES. Each PARTY shall designate, in writing, its authorized official representative to the other PARTY prior to the effective date of the Contract. Each PARTY shall notify the other, in writing, of any change of their official representative.

ARTICLE II: PAYMENT

- A. Contract Subject to Availability of Funds. This Agreement is entered into subject to the availability of funds for the services covered by this Agreement. In the event funding to the DEPARTMENT is not available or continued at an aggregate level sufficient to allow for purchase of the indicated quantity of agreed upon services, the DEPARTMENT shall notify the CONTRACTOR in writing promptly upon becoming aware thereof and the obligations of each PARTY under this Agreement shall thereupon be terminated. Any termination of this Agreement resulting therefrom shall be without prejudice to any and all obligations and liabilities of either PARTY already accrued prior to such termination.
- B. Reimbursement Amount. The DEPARTMENT agrees to pay the CONTRACTOR as described in Attachment B. The DEPARTMENT shall pay CONTRACTOR's invoices within thirty (30) days of receipt thereof, subject to paragraph (D) below. Without limiting its rights or remedies, upon ten (10) days' prior written notice. CONTRACTOR may halt or terminate performance of the Services if payment of a properly submitted, correct invoice is not received within sixty (60) days of receipt by the DEPARTMENT and the DEPARTMENT does not thereafter make such payment within such ten (10) day notice period.

- C. Requirement of Purchase Order. This Agreement is subject to the approval of a Purchase Order by the Secretary of the DEPARTMENT of Finance. Neither the State of Delaware nor the DEPARTMENT shall be liable for expenditures made or services delivered prior to the approval of a State of Delaware Purchase Order for these services and the CONTRACTOR shall not be required to provide any services hereunder until it receives such approved Purchase Order.
- D. Withholding of Payments to the CONTRACTOR. The DEPARTMENT has a right to seek recovery and a right to withhold payment (reasonably describing the basis thereof in a written notice provided to CONTRACTOR within thirty days of receipt of the applicable invoice)(an "Invoice Dispute Notice") in the event of the CONTRACTOR's failure to deliver services or deliverables in accordance with this Agreement. In no event shall the DEPARTMENT be liable for payment for services provided for which a) the CONTRACTOR has not provided an accurate invoice, including any details to be included in an invoice that the parties agree to in advance in writing, during the regular course of business and periodic billing, and b) the DEPARTMENT has thereafter reasonably requested or demanded via a timely Invoice Dispute Notice such missing detail or correction of billing, as applicable, for any services provided for the period of time at issue, and c) the CONTRACTOR has thereafter failed to provide corrected billing or requested detail, as applicable, following receipt of such a request or demand for such detail or corrected billing.
- E. Delaware is a sovereign entity, and 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 as a consequence of this Agreement.

ARTICLE III: TIME SCHEDULE.

- A. A project schedule is referenced in Attachment A and included in Attachment D.
- B. CONTRACTOR shall promptly notify the DEPARTMENT of any known or expected delay of services.
- C. CONTRACTOR shall at all times use diligent efforts to perform the Services in accordance with such project schedule (as may be modified by the parties during the course of the project upon mutual agreement, including by agreed-upon updates to the parties' project plan).

ARTICLE IV: WORK PRODUCT

- A. Except for any Contractor Technology (as defined below) contained therein, all materials, information, documents, and reports, whether finished, unfinished, or draft, first developed or prepared by CONTRACTOR or its permitted subcontractors for delivery to the DEPARTMENT in the course of performing the services to be performed hereunder ("Deliverables") shall become the property of DEPARTMENT upon full and final payment to CONTRACTOR, and shall be delivered to DEPARTMENT's designated representative upon completion or termination of this Agreement, whichever comes first, provided that any unfinished or draft Deliverables shall be provided on an as-is basis, without warranty of any kind. CONTRACTOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products or Deliverables on any other project conducted by DEPARTMENT. DEPARTMENT shall have the right to reproduce all Deliverables supplied pursuant to this Agreement.
- B. CONTRACTOR retains all title and interest to the data, tools, methodologies, and templates it furnished and/or generated pursuant to this Agreement and all modifications and derivatives thereof (collectively, the "Contractor Technology"). Retention of such title and interest does not conflict with DEPARTMENT's rights to the Deliverables developed in performing the project. Upon final payment, DEPARTMENT shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all Contractor Technology in which CONTRACTOR retains title that is contained in a Deliverable in connection with its use of such Deliverable, whether individually by DEPARTMENT or jointly with CONTRACTOR. Any and all source code to the software Deliverables developed in connection with the Services provided will be provided to DEPARTMENT if so specified in Attachment A, and the aforementioned right and license shall apply to such source code. The parties will cooperate with each other and execute such other documents as may be necessary to achieve the objectives of this Section.
- C. In no event shall CONTRACTOR be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, CONTRACTOR shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.
- D. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by CONTRACTOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of CONTRACTOR even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. DEPARTMENT's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.
- E. To the extent any Contractor Technology provided to the DEPARTMENT hereunder constitutes merchandise within the meaning of section 471 of the Internal Revenue Code, such Contractor Technology is licensed to the DEPARTMENT by CONTRACTOR as agent for Deloitte Consulting Product Services LLC (its wholly-owned subsidiary)("DCPS"). The assignment and license grant in this Article do not apply to any software, hardware, other products or materials (including any modifications or enhancements thereto or derivative works based thereon) that is subject to a separate license agreement between the DEPARTMENT and any third party, including, without limitation, DCPS.

ARTICLE V: WARRANTY

- A. CONTRACTOR warrants that its Services will be performed in a good and workmanlike manner. CONTRACTOR agrees to re-perform any work not in compliance with this warranty brought to its attention via written notice within a reasonable time after that work is performed. In addition, the warranty set forth in Exhibit A hereto shall apply, in accordance with the terms contained therein.

EXCEPT FOR SUCH WARRANTIES AND THE WARRANTY SET FORTH IN ARTICLES X(Q) and X(G)(1) BELOW, CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- B. Third-party products are not within the scope of this Agreement and are not warranted hereunder, as the terms and conditions of the licenses or other agreements shall be solely between the DEPARTMENT and such third parties and such terms and conditions shall govern.

ARTICLE VI: INDEMNIFICATION

- A. CONTRACTOR shall indemnify and hold harmless the State, the DEPARTMENT, either of their officers and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (any third party claim that the Deliverables infringe their patent, trademark, copyright, trade secret, or other intellectual property rights, provided as to (A) or (B) and as to the indemnity set forth in Article I, Section B(15)(e) and Article I, Section B(15)(a) that (i) CONTRACTOR shall have been notified promptly in writing by DEPARTMENT of any notice of such claim and the DEPARTMENT shall cooperate with CONTRACTOR in its defense thereof; and (ii) CONTRACTOR shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.
- B. If DEPARTMENT promptly notifies CONTRACTOR in writing of a third party claim against the State of Delaware, the DEPARTMENT, or any of their officers or employees that any Deliverable infringes a copyright or a trade secret or other intellectual property right of any third party, CONTRACTOR will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the State of Delaware, the DEPARTMENT or any of its officers or employees. CONTRACTOR will not indemnify DEPARTMENT, however, if the claim of infringement is caused by (1) DEPARTMENT's misuse or modification of the Deliverable; (2) DEPARTMENT's failure to use corrections or enhancements made available by CONTRACTOR; (3) DEPARTMENT's use of the Deliverable in combination with any product or information not owned or developed by CONTRACTOR; (4) DEPARTMENT's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by the DEPARTMENT or any third party. If any Deliverable is, or in CONTRACTOR's opinion is likely to be, held to be infringing, CONTRACTOR shall at its expense and option either (a) procure the right for DEPARTMENT to continue using it, (b) replace it with a non-infringing equivalent, (c) modify it to make it non-infringing. The foregoing remedies constitute DEPARTMENT's sole and exclusive remedies and CONTRACTOR's entire liability with respect to infringement.

ARTICLE VII: EMPLOYEES

- A. CONTRACTOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor DEPARTMENT's request for specific individuals.
- B. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of, and pursuant to, the services. This provision shall not restrict the right of either party to solicit or recruit generally in the media.
- C. Criminal background checks may be required of any employee of CONTRACTOR who will be assigned to this project and who will perform services on the DEPARTMENT's premises, other designated locations or have access to the DEPARTMENT's systems. The DEPARTMENT shall be solely responsible for the performance of such checks, and for the expense thereof, shall use information from such checks and tests solely for the purposes of approving CONTRACTOR personnel and subcontractors to provide Services hereunder and shall not disclose the results to any third party except to the extent required by applicable law or regulation.

ARTICLE VIII: ANTI-DISCRIMINATION

- A. Equal Employment Opportunity Practices. The CONTRACTOR agrees to comply with all the applicable terms, provisions, and requirements of Title VII of the Civil Rights Act of 1964, Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations and any other applicable Federal, state, local, or other equal employment opportunity act, law, statute, and regulation, along with all amendments and revisions of these laws, in the performance of this Agreement.
- B. Non-Discrimination Provisions and Requirements. The CONTRACTOR agrees to comply with all the applicable terms, requirements, and provisions of Titles VI and VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and any other applicable Federal, State, local, or other anti-discriminatory act, law, statute, and regulation, along with all amendments and revisions of these laws, in the performance of this Agreement, and the CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of race, creed or religion, age, sex, color, national or ethnic origin, disability, or upon any other illegal discriminatory basis or criteria in the performance of this Agreement.

ARTICLE IX: TERMINATION

- A. This Agreement may be terminated by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
1. Not less than 30 calendar days written notice of intent to terminate; and
 2. An opportunity for cure and consultation with the terminating party prior to termination.
- B. This Agreement may be terminated in whole or in part by DEPARTMENT for its convenience, but only after CONTRACTOR is given:
1. Not less than 30 calendar days written notice of intent to terminate; and
 2. An opportunity for consultation with DEPARTMENT prior to termination.
- C. CONTRACTOR may terminate this Agreement or performance of the relevant part of its Services upon written notice, if it determines that a governmental, regulatory or professional entity (including, without limitation, the American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board or the Securities and Exchange Commission) or entity having the force of law has introduced a new, or modified an existing, law, rule, regulation, interpretation or decision the result of which would render CONTRACTOR's performance of the services illegal or otherwise unlawful or in conflict with independence or professional rules.
- D. If termination for default is effected by DEPARTMENT, DEPARTMENT will pay CONTRACTOR that portion of the compensation which has been earned as of the effective date of termination but:
1. No amount shall be allowed for anticipated profit on performed (beyond the compensation for such performed services as already provided for under this Agreement) or unperformed services or other work, and
 2. Any payment due to CONTRACTOR at the time of termination may ultimately be adjusted by final judicial determination or by written agreement of the parties to the extent of any additional costs occasioned to DEPARTMENT by reason of CONTRACTOR's default.
 3. Upon termination for default, DEPARTMENT may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event CONTRACTOR shall permanently cease conducting business (excluding, for clarity, any sale or transfer of its business or assets or reorganization), DEPARTMENT shall have the right to make an unsolicited offer of employment to any employees of CONTRACTOR assigned to the performance of the Agreement, notwithstanding the provisions of Article VII(B).
- E. If after termination for failure of CONTRACTOR to fulfill contractual obligations it is determined that CONTRACTOR has not so failed, the DEPARTMENT may terminate the Agreement for convenience upon written notice.
- F. The rights and remedies of DEPARTMENT and CONTRACTOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- G. Non-Appropriation of Funds.
1. Validity and enforcement of this Agreement is subject to appropriations by the Federal Government and/or the Delaware General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated DEPARTMENT may immediately terminate this Agreement upon as much prior written notice as is reasonably practicable, and this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.
 2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and DEPARTMENT's obligations under it shall be extinguished at the end of the fiscal year in which the Federal Government or the Delaware General Assembly fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.
 3. A termination for non-appropriation of funds will not be considered a termination for convenience.
- H. Gratuities.
1. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Agreement if it is found after notice and hearing by DEPARTMENT that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of DEPARTMENT 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.
 2. In the event this Agreement is terminated as provided in subsection H.1 above, DEPARTMENT shall be entitled to pursue the same remedies against CONTRACTOR it could pursue in the event of a breach of this Agreement by CONTRACTOR.
 3. The rights and remedies of DEPARTMENT provided in this subsection H shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE X: ADMINISTRATIVE PROCEDURES

A. Amendment, Modification and Waiver.

1. Procedure for Amendment. This Agreement may be amended by written agreement duly executed by authorized officials of both PARTIES. No alteration, variation, modification or waiver of the terms and provisions of this Agreement shall be valid unless made in writing and duly signed by the PARTIES. Every amendment shall specify the date on which its term and provision shall be effective.

2. Nullification. In the event of amendments to current Federal or State of Delaware laws that nullify any term or provision of this Agreement, the remainder of the Agreement will remain unaffected.
 3. Waiver of Default. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by an authorized representative of the DEPARTMENT and attached to the original Agreement.
- B. Notice Between the Parties. Any notice required or permitted under this Agreement shall be effective upon receipt and may be hand delivered with receipt requested and granted or by registered or certified mail with return receipt requested to the following addressees. Either PARTY may change its address for notices and official formal correspondence upon five (5) days' written notice to the other.

For CONTRACTOR: Deloitte Consulting LLP
Attn: Nicole Fuller, Principal
2601 Market Street, 2nd Floor
Harrisburg PA 17110, USA

For DEPARTMENT: Delaware DSCYF
John Glancey, Project Director
1825 Faulkland Road
Wilmington, DE 19805

- D. Subcontracts. The CONTRACTOR shall not enter into any subcontract for any portion of the services covered by this Agreement, other than to subcontract to its affiliates and related entities in compliance with the DTI Standards except with the prior written approval of the DEPARTMENT, which shall not be unreasonably withheld. The requirements of this paragraph do not extend to the purchase of articles, supplies, equipment, and other day-to-day operational expenses in support of staff providing the services covered by this Agreement. No provision of this paragraph and no such approval by the DEPARTMENT of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation by the DEPARTMENT in addition to the total agreed upon cost under this Agreement. For the purpose of this Agreement, licensed independent professionals including, but not limited to, physicians, psychologists, social workers and counselors shall not be considered "subcontractors" as that term is used in this paragraph.
- E. Non-Assignability. The CONTRACTOR shall not assign the contract or any portion thereof without prior written approval of the DEPARTMENT and subject to such conditions and provisions as the DEPARTMENT may deem necessary. No such approval by the DEPARTMENT of any assignment shall be deemed to provide for the incurrence of any obligations of the DEPARTMENT in addition to the total agreed upon price of this Agreement.
- F. Interpretation.
1. Third Party Beneficiary Exclusion. This Agreement is executed solely for the mutual benefit of the PARTIES. It is the express intention of the PARTIES that no provision of this Agreement should be interpreted to convey any rights or benefits to any third party.
 2. Choice of Law. This Agreement shall be interpreted and any disputes resolved according to the laws of the State of Delaware. The CONTRACTOR agrees to be bound by the laws of the State of Delaware and to bring any legal proceedings arising hereunder in a court of the State of Delaware. For the purpose of Federal jurisdiction, in any action in which the State of Delaware or the DEPARTMENT is a party, venue shall be in the United States District Court for the State of Delaware.
 3. Headings. The article, section and paragraph headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.
- G. Qualifications to Conduct Business.
1. Qualification to Provide Service. The CONTRACTOR warrants that it is qualified to do business in Delaware or the state in which services under this Agreement shall be provided, and is not prohibited by its articles of incorporation, bylaws, or the law under which it is incorporated from performing the services required under this Agreement.
 2. Documentation of Business Status. The CONTRACTOR shall submit to the Contract Manager copies of all licenses, accreditations, certifications, sanctions, and any other documents that are required by law or regulation with respect to the Services as specified by the DEPARTMENT. If the CONTRACTOR conducts business in Delaware, the CONTRACTOR must possess a valid Delaware Business License, obtainable from the State of Delaware Division of Revenue. The CONTRACTOR shall submit a copy of the license at the time of signature of the Agreement; provided, however, that if the CONTRACTOR is a non-profit organization, the CONTRACTOR shall instead submit, at the time of signature of the Agreement, written approval from the U.S. Internal Revenue Service of this non-profit status. If the CONTRACTOR uses any subcontractors, the CONTRACTOR will ensure that the subcontractor will either obtain a Delaware Business License or provide proof of an existing Delaware Business License.
 3. Change in Business Status. The CONTRACTOR shall promptly notify the DEPARTMENT of any change in its ownership, business address, partnership status, and any other occurrence or anticipated occurrence that could materially impair the qualifications or ability of the CONTRACTOR to conduct business under this Agreement.

4. Suspension/Exclusion from Medicaid/Medicare. If the CONTRACTOR is suspended or excluded from participation in the Medicaid Assistance Program of the State of Delaware or another state or from the Medicare Program, or charged with sanctions or violation of such programs, the CONTRACTOR shall promptly notify the DEPARTMENT in writing of such charges, sanctions, violations, suspension or exclusion. CONTRACTOR agrees such suspension, exclusion, violations, sanctions, or charges may, at the DEPARTMENT's discretion, be deemed good cause for immediate termination of this Agreement upon written notice, and the DEPARTMENT shall not be liable for any services provided after the date of such termination.

H. Records and Audits.

1. Maintenance. The CONTRACTOR shall maintain billing and payment books, records, and documents pertaining to this Agreement to the extent and in such detail as shall adequately document the fees and payment thereof for the reimbursed services for purposes of programmatic or financial audit. The CONTRACTOR agrees to maintain such other specific records and statistics regarding the Services as may be reasonably required by the DEPARTMENT and agreed upon in writing in advance. The CONTRACTOR agrees to preserve and, upon reasonable advance written request, during normal business hours, make available to the DEPARTMENT such records for a period of three (3) years from the date the relevant services were rendered by the CONTRACTOR. Records involving matters in litigation shall be retained for three (3) years or one (1) year following the termination of such litigation (whichever is later).
 2. Availability for Audits. The CONTRACTOR agrees to make such records available for inspection, audit, or reproduction to any official State of Delaware representative in the performance of his/her duties under the Contract. The CONTRACTOR agrees that an on-site program review, including, but not limited to, review of service records and review of service policy and procedural issuances may be conducted at any reasonable time, with or without notice, by the DEPARTMENT when it is concerned with or about the services performed hereunder. Failure by the CONTRACTOR to accord the DEPARTMENT reasonable and timely access to necessary records as provided for herein for organizational audit may be a material breach of this Agreement and good cause for termination of this Agreement, and the DEPARTMENT shall not be liable for any services provided after the date of such termination.
 3. Costs Owed. The amount of any Agreement overcharge by CONTRACTOR revealed by the examination of the CONTRACTOR's financial records hereunder will be reimbursed by the CONTRACTOR (subject to CONTRACTOR's rights to dispute such findings). Reimbursement to the DEPARTMENT for such overcharges shall be drawn from the CONTRACTOR's own resources and not charged to Agreement costs or cost pools indirectly charging Agreement costs.
 4. Agreement Termination. The CONTRACTOR shall maintain such records for a period of three (3) years from the date the relevant services were rendered by the CONTRACTOR and shall make these records available on reasonable advance written request by the DEPARTMENT, during normal business hours, notwithstanding any termination of this Agreement.
- I. Assignment of Causes of Action Relating to Antitrust Laws. In the event the CONTRACTOR is successful in an action under the antitrust laws of the United States and/or the State of Delaware against a vendor, supplier, subcontractor, or other party who produces particular goods or services to the CONTRACTOR, that impact on the budget for this Agreement, the CONTRACTOR agrees to reimburse the DEPARTMENT the pro rata portion of the damages awarded that are attributable to the goods and/or services used by the CONTRACTOR to fulfill the requirements of this Agreement. In the event the CONTRACTOR refuses or neglects after reasonable notice by the DEPARTMENT to bring such antitrust action, the CONTRACTOR will be deemed to assign such action to the DEPARTMENT.
- J. Intentionally left blank
- K. DEPARTMENT agrees not to use CONTRACTOR's name, either express or implied, in any of its advertising or sales materials. CONTRACTOR reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.
- L. SEVERABILITY: 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.
- M. FORCE MAJEURE: Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
- N. 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.
- O. CONTRACTOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement such that such performance would violate an applicable law or regulation. CONTRACTOR further covenants, to its engagement principal's knowledge, that in the performance of said services no person having any such interest shall be employed such that their performance of the services would be in violation of an applicable law or regulation.
- P. CONTRACTOR acknowledges that DEPARTMENT has an obligation to ensure that public funds are not used to subsidize private discrimination. CONTRACTOR recognizes that if they refuse 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, DEPARTMENT may declare CONTRACTOR in breach of the Agreement, terminate the Agreement, and designate CONTRACTOR as non-responsible.

- Q. CONTRACTOR warrants that no person or selling agency 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 in violation of applicable law. For breach or violation of this warranty, DEPARTMENT shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- R. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- S. CONTRACTOR shall maintain all public records, as defined by 29 Del. C. § 502(7), of its services under this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 Del. C. Ch. 5, to the extent applicable. During the term of this Agreement, authorized representatives of DEPARTMENT may inspect or audit CONTRACTOR's such records pertaining to this Agreement at the CONTRACTOR business office during normal business hours upon reasonable advance notice.
- T. In compliance with State procurement law, the DEPARTMENT may choose to purchase certain hardware and/or software from DCPS. DCPS will perform all activities contemplated by the Agreement that are or may be deemed to be a resale of tangible products for any purpose. Hardware, software and other tangible products will be provided to the DEPARTMENT under the third-party vendor's agreement accompanying such hardware, software or product, and its use will be governed by the terms thereof. In addition, all warranty and support offered by the third party manufacturer or software developer will be as set forth in such agreement, and the DEPARTMENT shall look directly to such third party manufacturer or software developer with respect to such warranty and support obligations. The DEPARTMENT shall permit CONTRACTOR to access and use such hardware and/or software as necessary for purposes of CONTRACTOR's performance of the Services. For purposes of such a transaction, CONTRACTOR may agree to serve as an agent of DCPS solely for purposes of invoicing the DEPARTMENT, if applicable, for the software/hardware/maintenance, and collecting payment with respect to such software/hardware/maintenance.

ARTICLE XI LIMITATION ON DAMAGES

The Department agrees that CONTRACTOR, its subcontractors and their respective personnel shall not be liable to the DEPARTMENT for any claims, liabilities, or expenses relating to this engagement ("Claims") for an aggregate amount in excess of the greater of \$6,300,000.00 (Six Million, Three Hundred Thousand US Dollars) or the fees paid by the DEPARTMENT to CONTRACTOR pursuant to this engagement, except to the extent finally judicially determined to have resulted primarily from the recklessness, bad faith or intentional misconduct of CONTRACTOR or its subcontractors and except for Claims for which CONTRACTOR is obligated to indemnify under Article I(B)16(e) above . In no event shall CONTRACTOR, its subcontractors or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense, relating to this engagement. In circumstances where all or any portion of the provisions of this Article are judicially determined to be unavailable, the aggregate liability of CONTRACTOR, its subcontractors and their respective personnel for any Claim shall not exceed an amount which is proportional to the relative fault that their conduct bears to all other conduct giving rise to such Claim.

Deliverable Warranty

- a. For a period of twelve (12) months following acceptance of the final system implementation software Deliverable (hereinafter called the "Warranty Period"), CONTRACTOR warrants that such Deliverable shall operate free of Defects (as defined herein). "Defects" shall mean any Deficiencies that could not have been reasonably identified by the Deliverable approval process described in this Agreement. "Deficiencies" shall mean a failure of a Deliverable to conform in all material respects to the applicable requirements specified in the applicable Specifications or Deliverable.
- b. If, within the Warranty Period, such Deliverable fails to comply with the warranty as stated in the preceding subparagraph, CONTRACTOR shall repair any Defects as necessary to bring such Deliverable into compliance with such warranty at no cost to the DEPARTMENT, provided that, for any such failure identified by the DEPARTMENT, the DEPARTMENT notifies CONTRACTOR in writing of such failure and describes the correct operation, provides CONTRACTOR with reasonably adequate documentation and evidence to reproduce such failure, and, when necessary, demonstrates such failure to CONTRACTOR so that the cause of such failure may be traced and corrected, in each case within the Warranty Period. CONTRACTOR agrees to investigate and verify each reported failure. CONTRACTOR shall make such warranty repairs within a reasonable period of time following such notification by the DEPARTMENT, or as otherwise agreed between CONTRACTOR and the DEPARTMENT, with the reasonableness of the response and correction time being determined based upon the nature and severity of the Defect and the impact the Defect is having on DEPARTMENT's operations and/or ability to fulfill its financial reporting duties and obligations. If CONTRACTOR fails to correct Defects in such Deliverable reported by the DEPARTMENT during the Warranty Period within a reasonable time and such failure is not due to DEPARTMENT's failure to fulfill any obligation under this Agreement with respect to such Deliverable, the DEPARTMENT shall, at its option, be entitled to (i) receive a refund or credit of professional fees paid to CONTRACTOR under the Agreement with respect to the Services giving rise to the Defect in such Deliverable, or (ii) elect to have the parties mutually agree upon any additional attempts by CONTRACTOR to correct such Deliverable. This subparagraph (b) sets forth DEPARTMENT's sole and exclusive remedy, and CONTRACTOR's sole and exclusive obligation, with respect to any claim that such final Deliverable fails to comply with the warranty set forth in subparagraph (a).
- c. CONTRACTOR shall have no obligation under the Agreement to make warranty repairs attributable to: (i) the DEPARTMENT's misuse or modification of a Deliverable; (ii) the DEPARTMENT's failure to use corrections or enhancements made available by CONTRACTOR at no additional cost to DEPARTMENT; (iii) the DEPARTMENT's use of such Deliverable in combination with any product other than one specified by CONTRACTOR; (iv) the quality or integrity of data from other automated or manual systems with which such Deliverable interfaces; (v) hardware, systems software, telecommunications equipment or software not a part of such Deliverable which is inadequate to allow proper operation of such Deliverable or which is not operating in accordance with the manufacturer's specifications; or (vi) operation or utilization of such Deliverable in a manner not contemplated by this Contract. If any such exception applies, CONTRACTOR shall provide notice to the DEPARTMENT, and the DEPARTMENT shall compensate CONTRACTOR for CONTRACTOR's time at the rates set forth in the Agreement and reasonable, out-of-pocket expenses actually incurred in (a) determining the source of and analyzing such condition, and (b) to the extent approved by DEPARTMENT in advance, rendering consulting services to state in remedying such condition.
- d. The warranties set forth in the Agreement shall not apply with respect to hardware or software that is supplied by a third party to DEPARTMENT. The terms and conditions of the warranty to DEPARTMENT with respect to such hardware or software will be provided by the third party vendor of such hardware or software. CONTRACTOR bears no responsibility of any kind for such hardware or software and state shall not look to CONTRACTOR for any warranty for such products.
- e. In providing the Services under the Contract, CONTRACTOR shall be entitled to conclusively rely on representations as to product capabilities made by the DEPARTMENT's software and hardware vendors and any other third parties. CONTRACTOR does not and will not provide any representation, warranty or other form of assurance as to the quality, performance, or fitness of any software or hardware or other product that is or shall be selected by DEPARTMENT, whether or not identified or referred to DEPARTMENT by CONTRACTOR during performance of its services or otherwise.

Appendix 1

1. Acceptable Use Policy
2. Application Programming Language Standard
3. Middleware Standard
4. Offshore IT Staffing Policy
5. Systems Architecture Standard
6. Systems Environment Standard
7. Database Management System Standard
8. Data Classification Policy
9. Server Operating Systems Standard
10. State of Delaware Information Security Policy (DISP)
11. Disposal of Electronic Equipment and Storage Media Policy
12. Electronic Signature Standard
13. Encryption Key Management Policy
14. Mobile Device Encryption Standard
15. Secure File Transport
16. Strong Password Standard
17. Web Application Security
18. Data Center Policy
19. Software Policy
20. Domain Naming Standards
21. Electronic Payment Standard
22. Document Imaging Standard
23. Remote Access Standard



State of Delaware
DEPARTMENT OF TECHNOLOGY AND INFORMATION
William Penn Building
801 Silver Lake Boulevard
Dover, Delaware 19904

Contractor Confidentiality (Non-Disclosure) and Integrity of Data Agreement

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information, provided that any such modification which is reasonably required for performance of CONTRACTOR's Services pursuant to the Agreement shall be deemed to be thus authorized. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information and subject to the terms of Article I, Section B(13) of the Agreement.

Contractor, when performing work for the Department of Technology and Information, understand that it acts as an extension of DTI and therefore is responsible for safeguarding the States' data and computer files as indicated above. It, its personnel, and permitted subcontractors will not disclose or modify State data or State computer files without the written authorization of DTI except as permitted in the Agreement or herein and will use such data and files only as reasonably necessary in its performance of the Services. Furthermore, it understands that it is to take all reasonable precautions to prevent unauthorized use, disclosure, or modification of State computer files except as permitted in the Agreement or herein, and should alert the Department of any situation which it expects or which would reasonably be expected to result in unauthorized use, disclosure or modification of State data. Penalty for unauthorized use, unauthorized modification of such data or files, or disclosure of any State confidential information may be subject to prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any Contractor personnel and permitted subcontractors working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that Deloitte Consulting agrees to abide by the terms above.

Contractor or Employee Signature_____

Date: _____

Contractor Name: Deloitte Consulting LLP

Rev. 1/19/2006

Standard IT Agreement
Revised 3/12

DESCRIPTION OF SERVICES

I. SERVICE OVERVIEW

- A. DESCRIPTION OF SERVICE: The CONTRACTOR agrees to serve as the Design, Development and Implementation contractor for the DEPARTMENT'S new data system identified as "FACTS II".
- B. PURPOSE/GOALS: The DEPARTMENT issued Request(s) for Proposal(s) (RFPs) to solicit competitive bids for all work necessary for constructing a new data system to meet the needs of the DEPARTMENT. The CONTRACTOR'S proposal was selected and has resulted in the successful negotiation of this Contract with the DEPARTMENT for Design, Development and Implementation (DD&I) services as specified herein.

II. PROGRAM AND SERVICE COMPONENTS / SCOPE OF WORK:

The CONTRACTOR'S proposal dated February 15, 2011 and submitted in response to the DEPARTMENT'S request for such proposals specifically defines the work to be performed by the CONTRACTOR under this contract with the DEPARTMENT, along with responsibilities, timeframes and full descriptions related to this work. This proposal is incorporated into this Contract by reference and is hereafter referred to as "Attachment C" to this Contract.

The Scope of Work Modification clarifies and modifies the PROPOSAL based upon stated agreement with the DEPARTMENT as to the modifications it contains. This document is likewise incorporated into this Contract by reference, and is hereafter referred to as "Attachment D" to this Contract.

The Scope of Work applicable to this Contract is therefore contained in Attachment C and is understood to include those modifications specified in Attachment D, and both documents together represent the entire scope of work, timelines and all revisions expected and obligated by all parties to this contract.

III. STRUCTURE AND OPERATIONS

The CONTRACTOR agrees to provide and maintain the applicable structures and operations as defined and described in Attachments C and D to this Contract.

IV. REPORTING REQUIREMENTS

The CONTRACTOR agrees to maintain all required reporting mechanisms and formats as defined and described in Attachments C and D to this Contract.

V. PERFORMANCE EXPECTATIONS

The DEPARTMENT expects the CONTRACTOR to fulfill the requirements of their role as the FACTS II DD&I Contractor by completing project components within specifications and on schedule, as defined and modified in Attachments C and D to this Contract.

BUDGET SUMMARY**Service Cost**

- A. The maximum amount of this contract is governed by the amount encumbered in the CONTRACTOR'S name on a State of Delaware purchase order. Without amendment the fees are fixed for the term of the contract. The fees for services (identified as "Deliverables") are as listed below:

Milestone: Project Initiation and Management		Due Date	Fee
Deliverable 6.5.1 Project Management Plan		6/29/2012	\$485,632.00
Deliverable 6.5.2 Weekly Status Report		5/7/2012 to 1/6/2015 *Weekly Submissions	No Cost Deliverables
Deliverable 6.5.3 Monthly Status Report		5/7/2012 to 12/5/2014 *Monthly Submissions	\$246,023.00 *Divided over 32 months
Milestone Total			\$731,655.00
Milestone: System Hardware		Due Date	Fee
Deliverable 6.6.1 System Hardware		7/20/2012	\$97,142.00
Milestone Total			\$97,142.00
Milestone: System Planning and Analysis		Due Date	Fee
Deliverable 6.7.1 Application Architecture		8/3/2012	\$269,253.00
Deliverable 6.7.2 Requirements Verification & System Design Schedule		6/25/2012	\$53,851.00
Deliverable 6.7.3 Design Orientation		8/24/2012	\$753,908.00
Milestone Total			\$1,077,012.00
Requirements Verification		Due Date	Fee
Deliverable 6.8.1 Requirements Traceability Matrix		10/5/2012	\$1,077,012.00
Deliverable 6.8.2 Conceptual Design		10/5/2012	\$764,256.00
Deliverable 6.8.3 Logical Data Model		10/5/2012	\$143,602.00
Milestone Total			\$1,984,870.00
Milestone: System Design		Due Date	Fee
Deliverable 6.9.1 Detailed Design Document		1/11/2013	\$1,626,078.00
Deliverable 6.9.2 Physical Data Model		1/11/2013	\$134,627.00
Deliverable 6.9.3 Data Dictionary		1/11/2013	\$269,253.00
Deliverable 6.9.4 System Architecture		1/11/2013	\$269,253.00
Deliverable 6.9.5 Document Management Design Specification		1/11/2013	\$134,627.00
Milestone Total			\$2,433,838.00

Milestone: Reports		Due Date	Fee
Deliverable 6.10.1 Reports Tools/Methodology Training		4/5/2013	\$125,651.00
Deliverable 6.10.2 Reports Design Specifications		2/15/2013	\$1,130,863.00
Milestone Total			\$1,256,514.00
Milestone: Interface		Due Date	Fee
Deliverable 6.11.1 Interface Analysis and Design Specifications		2/15/2013	\$1,256,514.00
Milestone Total			\$1,256,514.00
Milestone: System Development		Due Date	Fee
Deliverable 6.12.1 Application Standards		10/12/2012	\$86,161.00
Deliverable 6.12.2 System Backup and Recovery Plan		10/12/2012	\$86,161.00
Deliverable 6.12.3 IADE Design		10/12/2012	\$86,161.00
Deliverable 6.12.4 Configuration Management, Build & Release Management Plan		10/12/2012	\$215,402.00
Deliverable 6.12.5 Migration Plan		10/12/2012	\$86,161.00
Deliverable 6.12.6 Code Release		6/6/2013	\$3,382,558.00
Milestone Total			\$3,942,604.00
Milestone: System Testing		Due Date	Fee
Deliverable 6.13.1.1 Unit Test Plan		10/26/2012	\$64,621.00
Deliverable 6.13.1.3 Unit Test Results		6/7/2013	\$323,104.00
Deliverable 6.13.2.1 System Test Plan		2/15/2013	\$64,621.00
Deliverable 6.13.2.3 System Test Results		7/16/2013	\$323,104.00
Deliverable 6.13.3.1 Integration Test Plan		5/24/2013	\$172,322.00
Deliverable 6.13.3.3 Integration Test Results		10/4/2013	\$349,501.00
Deliverable 6.13.4.1 Regression Test Plan		5/24/2013	\$64,621.00
Deliverable 6.13.4.3 Regression Test Results		10/4/2013	\$344,222.00
Deliverable 6.13.5.1 UAT Plan		8/9/2013	\$64,621.00
Deliverable 6.13.5.3 UAT Results		1/10/2014	\$346,333.00
Milestone Total			\$2,117,070.00
Milestone: System Training		Due Date	Fee
Deliverable 6.14.1 Training Plan		2/8/2013	\$35,900.00
Deliverable 6.14.2 Instructional Design		8/30/2013	\$21,540.00
Deliverable 6.14.3 User Manual		8/30/2013	\$143,602.00
Deliverable 6.14.4 CBT Design		6/6/2013	\$71,801.00
Deliverable 6.14.5 CBT Modules		10/17/2013	\$71,801.00
Deliverable 6.14.6 On-Line Help		11/21/2013	\$71,801.00
Deliverable 6.14.7 Train the Trainer		10/11/2013	\$107,701.00
Deliverable 6.14.8 Training Evaluation Report		2/21/2014	\$16,683.00
Deliverable 6.14.9 Help Desk Training		10/25/2013	\$35,900.00
Deliverable 6.14.10 System Maintenance Training		6/6/2014	\$71,801.00
Deliverable 6.14.11 Reports Maintenance Training		6/6/2014	\$71,801.00
Milestone Total			\$720,331.00

Milestone: Conversion		Due Date	Fee
Deliverable 6.15.1 Data Conversion Plan		10/5/2012	\$32,310.00
Deliverable 6.15.2 Data Conversion Specification & Mapping		1/11/2013	\$420,774.00
Deliverable 6.15.4 Conversion Test Plan		5/10/2013	\$32,310.00
Deliverable 6.15.5 Conversion Test Results (Integration)		7/12/2013	\$345,066.00
Deliverable 6.15.5 Conversion Test Results (UAT)		11/8/2013	\$161,552.00
Deliverable 6.15.6 Final Conversion Test Results		3/14/2014	\$161,552.00
Milestone Total			\$1,153,564.00
Milestone: System Implementation		Due Date	Fee
Deliverable 6.16.1 Implementation Plan		5/17/2013	\$44,876.00
Deliverable 6.16.2 Data Quality Plan		9/6/2013	\$44,876.00
Deliverable 6.16.3 Help Desk Operating Procedures		11/21/2013	\$89,751.00
Deliverable 6.16.4 System Transition Plan		11/21/2013	\$44,876.00
Deliverable 6.16.5 System Maintenance Plan		11/21/2013	\$44,876.00
Deliverable 6.16.6 Back Up & Recovery Plan		9/16/2013	\$44,876.00
Deliverable 6.16.7 Final System Documentation		6/20/2014	\$179,502.00
Deliverable 6.16.8 System Operations Manual		9/16/2013	\$179,502.00
Deliverable 6.16.9 Backout Plan		9/16/2013	\$44,876.00
Deliverable 6.16.10 Implementation Results Report		4/4/2014	\$44,876.00
Deliverable 6.16.11 FACTS II		1/6/2014	\$134,627.00
Milestone Total			\$897,514.00
Milestone: Post Implementation Support		Due Date	Fee
Deliverable 6.17.1 Final FACTS II Status & Transfer		6/20/2014	\$50,683.00
Deliverable 6.17.2 Federal Requirements Traceability Matrix		8/19/2014	\$65,465.00
Deliverable 6.17.3 Final System Documentation		10/9/2014	\$123,540.00
Milestone Total			\$239,688.00
Milestone: Support Federal Review		Due Date	Fee
Deliverable 6.18.1 Federal Review Readiness Plan		8/19/2014	\$38,012.00
Milestone Total			\$38,012.00
Total Cost			\$17,946,328.00

- B. The DEPARTMENT agrees to reimburse the CONTRACTOR on a Deliverable basis as indicated above. The CONTRACTOR shall be reimbursed for services provided at the identified Deliverable cost upon submittal of certified billing at the successful completion of each Deliverable and verification as required by the DEPARTMENT.

All invoices shall be submitted as follows:

State of Delaware - DSCYF
Attn: John Glancey
1825 Faulkland Road
Wilmington, DE 19805

- C. This Contract is considered to be a Deliverable-based Contract with a specific dollar amount payable to the CONTRACTOR by the DEPARTMENT for each Deliverable accepted by the DEPARTMENT as completed.

- D. Bills submitted after the tenth day following the end of any month may be delayed in processing, and reimbursement to the CONTRACTOR may be similarly delayed.
- E. The CONTRACTOR agrees that any submission by or on behalf of the CONTRACTOR of any claim for payment by the DEPARTMENT shall constitute certification by the CONTRACTOR that the services or items for which payment is claimed were actually rendered by the CONTRACTOR to the person identified as the recipient; that the claim does not exceed the CONTRACTOR'S usual charge for the same or equivalent services or items provided to persons not billed to the DEPARTMENT; that the claim is correctly coded in accordance with billing instructions prescribed by the DEPARTMENT; and that all information submitted in support of the claims is true, accurate, and complete.
- F. The CONTRACTOR shall make proper restitution to the DEPARTMENT for any payments received in excess of amounts due to the CONTRACTOR under the DEPARTMENT regulations or payment schedules whether such over payment is discovered by the CONTRACTOR or by the DEPARTMENT. The DEPARTMENT retains the right to offset reimbursement to be made to the organization subsequent to the identification of an overpayment.

Attachment C is the Contractor's Proposal

Dated 2/15/11

Due to the size of this document,
It is included by Reference

Attachment D

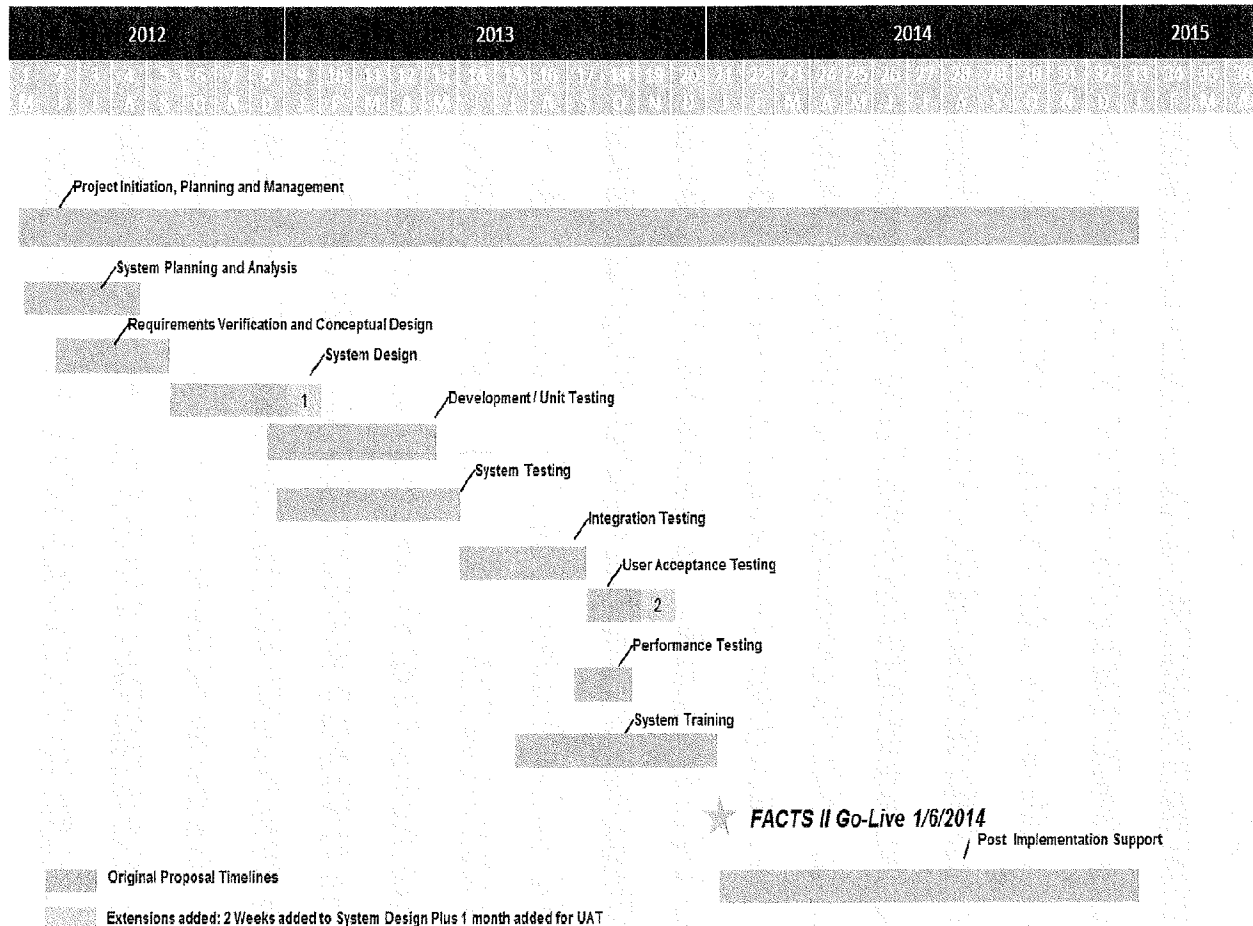
SCOPE OF WORK MODIFICATION

CONTAINING

Revisions to Original Proposal

1. Revised Project Timeline- 6 Week Additional Time

The FACTS II project timeline includes key project phases of project planning, requirements verification, design, development, testing, training, implementation support, and warranty. The FACTS II Project revised work plan includes 21.5 Months from project initiation to statewide go-live and the required 12 months for warranty, totaling a 33.5 month project timeline. As requested by DSCYF, six weeks of additional time has been added to the originally proposed schedule as follows: two weeks of additional time during the design phase; and, four weeks of additional time during the user acceptance test (UAT) phase. Attachment #1, FACTS II Project Work Plan provides the revised 33.5 month project timeline.



2. Ad-Hoc Reporting Approach

This section describes the Ad-Hoc Reporting approach for the FACTS II project. This section does not represent additional scope, but provides additional clarification to our response as provided in Section 4.10 Reports, and documents the parties' agreement concerning how FACTS II Requirement #11-8 will be met.

DSCYF FACTS II Requirement #11-8 requires the following:

FACTS II will provide a reporting environment that will manage all reporting capabilities (such as ad-hoc, administrative, system, etc.) that can report on both individual and aggregated data by individuals, units, divisions, etc.

To meet the DSCYF requirement stated above, the following approach has been discussed and accepted by DSCYF for the “Ad-Hoc” component of the requirement:

1. Deloitte Consulting will implement the proposed FACTS II Reporting Architecture as described in Section 4.10 Reports using SAP Business Objects Enterprise as the business intelligence tool and Oracle as the reporting database.
2. DSCYF will timely procure, install, and configure the required hardware needed to support the FACTS II Reporting Architecture at DSCYF’s expense.
3. DSCYF will timely procure and install the operating system software needed to support the FACTS II Reporting Architecture at DSCYF’s expense.
4. Oracle Streams will be used for data replication and the Operational Data Store (ODS) from the production FACTS II Database server to the FACTS II Reporting Database, as scheduled.
5. Business Objects Info View Tool will be used to schedule, facilitate user security, facilitate user access, and publish the “ad-hoc” and scheduled reports that are created.
6. Objects Universe Designer will be used to create a “FACTS II Master Reporting Universe” that will centrally maintain all FACTS II reporting tables and columns. All active FACTS II tables and columns will be used to create the FACTS II Reporting Master Universe to generate scheduled and ad-hoc query reports. The FACTS II Reporting Master Universe may be used by DSCYF to create sub-universes to support ad-hoc queries by defined department users. Deloitte will support DSCYF in the creation of 4 Sub Universes that DSCYF will lead the effort which will be structured as follows:
 - Deloitte reports team will create the Master Universe utilizing it as an instruction tool for DSCYF staff.
 - DSCYF will lead the creation the 4 sub universes. DSCYF will lead all systems development phases and the Deloitte reports team will provide support to DSCYF by responding to inquiries and providing general technical direction. The timing for the creation of the 4 sub universes will be agreed to by the parties.
7. Business Objects Web Interface is the interface tool that will be used by both the Deloitte Consulting and the DSCYF reports team to develop scheduled and ad-hoc reports.
8. Deloitte Consulting will provide knowledge transfer to DSCYF senior report writers as planned and documented in the FACTS II Knowledge Transfer deliverables.
9. In addition to Report analysis and design, Deloitte Consulting will develop two hundred (200) reports according to the methodology outlined in section 4.10.

3. Performance Testing

This section describes the Performance Testing activities for the FACTS II project. This section does not represent additional scope, but provides additional clarification to our response as provided in Section 4.13 System Testing, Page 24 Performance Testing. The attached Revised FACTS II Project Work Plan dated March 28, 2012 has been revised to add rows #972 to #981 to reflect the planned Performance Test activities.

The FACTS II project timeline includes key project phases of project planning, requirements verification, design, development, testing, training, implementation support, and warranty. The performance testing will be conducted as part of testing phase to identify and resolve material nonconformities to the Specifications within the application Deliverables.

The Performance Testing includes four major activities:

- Planning
- Configuration
- Execution
- Results Analysis

Planning

During Test Planning Phase, Deloitte Consulting will define key testing activities that are required to conduct performance testing. The various activities that will be planned are described below.

Identify Performance Testing Tool

Visual Studio Team System (VSTS) will be used as the performance testing tool. The VSTS components that will be used for performance testing are described in the table below.

<i>VSTS Components</i>	<i>Descriptions and Usage</i>
Coded UI test	Record the user actions that you want to use to create an automated UI test and generate the code for a coded UI test from this recording.
Test Run engine	The engine which is responsible for execution of all tests and generating results.
Unit Tests	Visual Studio automatically generates unit tests skeletons from code reducing the time taken to create unit test cases. The unit tests help in debugging code and maintaining the integrity of all code components.
Data diagnostics adapters	Test settings use diagnostic data adapters, which specify various types of data to collect when you run manual tests, automated tests, or both. These adapters can be used to simulate potential bottlenecks on the test machine or reduce the available system memory.
Test Case Management tool	This management tool helps manage test projects and test cases.
Team Foundation with Reporting Services	The reporting services help generate standard and custom reports for the data collected by running test cases.

Define Scope of Performance Testing

The criteria used for defining scope of the performance testing are described in the table below.

<i>Scope Criteria</i>	<i>Description</i>
Identify System Configuration	The environment where performance testing will be conducted is defined as part of the system configuration.
Identify Key User Scenarios	In order to evaluate the performance of the application, user scenarios or screens needs to be identified. These screens should represent the various aspects of the application such as: 1) Frequently used screens; 2) search screens; and 3) Transactional screens involving large and small tables. The identified key scenarios will be created as web tests in VSTS. "Web Test" is a VSTS script file that consists of steps which can be used by the VSTS to automate the execution of a test script.
Identify Think Time	Think Time is used to simulate human behavior that causes people to wait between interactions in a performance test scenario. In FACTS II performance testing think time determines the interval at which users are loaded for testing and actions performed in the screens during testing.
Identify Metrics	Metrics that will be measured and reported as part of performance testing.

3.1.2-1 Performance Testing Scope Criteria

Configuration

Configuration phase involves setting up the performance environment to conduct testing. The environment needs to be correctly configured and set up to accurately measure the performance of the application.

Execution

After test planning and configuration, the test execution phase for Performance Test occurs. A Performance Test is defined as when one or more web tests are executed while simulating multiple users interacting with FACTS II. In FACTS II Performance tests are created by combining Web Tests scenarios. Performance test will be executed in VSTS and results will be captured.

Results Analysis

Upon completion of the test execution in VSTS, the Technical team conducts analysis of the results to identify any material nonconformities to the Specifications within the application Deliverables. The parties will prioritize the foregoing nonconformities that are agreed to be addressed prior to acceptance and placement of the software Deliverable into the production environment. Upon resolution of those agreed to performance issues, the test script will be re-executed to validate the correction.