

Bidder’s comments and proposed exceptions are relating to the State of New Jersey Standard Terms and Conditions and mandatory requirements contained in the Request For Proposals (“RFP”) for the New Jersey Department of Treasury Division of Investment (“DOI”). All references to the “Customer” contained in our substitute language shall mean the State/DOI:

<b>Section #</b>	<b>Proposed Exception/Provision</b>	<b>Proposed Response</b>
RFP: Contractor Responsibilities – 6.5.2	<p>The provision provides that “Contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its deliverables and other services.”</p> <p>We would like to clarify that this obligation should be subject to Bidder’s standard of care and liability provisions.</p> <p>Please refer to our standard provision in Section 7.1 of the attached securities lending agreement. Bidder would only be responsible for direct damages that result from its fraud, negligence or willful misconduct.</p>	DOI is not modifying Section 6.5.2 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award. However, negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP.
RFP: Ownership of Material – 6.6	<p>We do not believe the provisions of this section are applicable to the securities lending services contemplated by this RFP.</p> <p>We propose to delete this section. In our view, the Customer would retain ownership of all data, documents and other information it provides to Bidder, and Bidder would retain ownership of, and proprietary rights in, any work product it generates or creates in the course of providing the services (including, but not limited to, software and accompanying documentation), unless we specifically agree otherwise on a case-by-case basis.</p>	DOI is not modifying Section 6.6 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award. However, negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP.
RFP: Data Confidentiality – 6.7.1	We propose to delete this section in its entirety and replace it with Section 6.4 of the attached securities lending agreement.	DOI is not modifying Section 6.7.1 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award. However, negotiated terms and conditions

Section #	Proposed Exception/Provision	Proposed Response
		may not conflict with any of the material terms and conditions set forth in the RFP.
RFP: Security Standards – 6.7.2	<p>We propose to delete this section in its entirety. We do not typically include security standards in our securities lending agreements (beyond the confidentiality provisions described above). Bidder maintains robust information security policies and standards which are designed to accommodate global industry standards, multi-jurisdictional regulatory requirements and constantly evolving technologies. We are happy to provide a summary of our security policies upon request.</p> <p>However, with respect to this RFP and the ultimate securities lending agreement, we cannot agree to the set of client-specific requirements contained in 6.7.8 of the RFP, which would require us to customize the systems and processes offered to all of our customers across the globe.</p>	DOI is not modifying Section 6.7.2 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award. However, negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP.
RFP: Right to Inspect Bidder’s Facilities – 7.3	We cannot allow customers to access our information technology systems or disaster recovery operations or facilities.	DOI is not modifying Section 7.3 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award. However, negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP.
State of NJ Standard Terms and Conditions – 3.6 – Performance of Services in the U.S.	<p>Our securities lending services are performed primarily in the U.S., however, as a global provider and as part of our global business model, Bidder has service hubs around the world and certain operations may be conducted at other locations around the globe.</p> <p>We would like to clarify that this restriction would not apply to the securities lending services contemplated under this RFP and</p>	<p>N.J.S.A. 52:34-13.2 applies to contracts primarily for the performance of services and requires that all services performed under the contract or under any subcontract be performed within the United States.</p> <p>An exception to this requirement may be sought where it is certified and approved in accordance with</p>

Section #	Proposed Exception/Provision	Proposed Response
	to the extent necessary Customer shall obtain an appropriate exception to N.J.S.A. 52:34-13.2 to permit Bidder to perform the securities lending services from its global hubs.	N.J.S.A. 52:34-13.2 that the service cannot be provided by a contractor within the United.
State of New Jersey Standard Terms and Conditions – 4.1 – Indemnification	<p>We would like to clarify that the indemnification provisions in 4.1 would not apply to the securities lending services to be provided under this RFP. As a general matter, Bidder does not indemnify its customers for losses arising out of our performance and/or for use of any materials or intellectual property.</p> <p>Please refer to Section 7 of the attached securities lending agreement regarding Bidder’s liabilities.</p> <p>In addition, Bidder expects to be indemnified by its customers subject to the terms in the attached securities lending agreement.</p>	<p>DOI is not modifying Section 6.7.2 of the RFP at this time. DOI notes that Section 1 of the State of New Jersey Standard Terms and Conditions, as modified by 6.15.1 of the RFP, provides that a bidder may present terms and conditions that are in conflict with those set forth in the RFP during negotiations prior to contract award. However, negotiated terms and conditions may not conflict with any of the material terms and conditions set forth in the RFP.</p> <p>DOI is not authorized by State law to provide indemnification to Bidder.</p>
State of NJ Standard Terms and Conditions – 4.2 – Insurance (as modified by Section 7.15.3 of RFP)	<p><b>4.2 INSURANCE</b></p> <p>The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best &amp; Company. <del>All policies must be endorsed to provide 60 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below.</del> The contractor shall provide the State with current certificates of insurance for all coverages and <u>upon request</u> renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of</p>	<p>The following sentence shall be added after the second sentence of Section 4.2 of the State of New Jersey Standard Terms and Conditions (“State Standard Terms and Conditions”): “If the contractor’s insurer will not provide 60 day notice of cancellation, then the contractor will assume responsibility for such notification.”</p> <p>Section 4.2, paragraph A, of the State Standard Terms and Conditions is modified as follows:</p> <p>Occurrence Form <del>Comprehensive Commercial</del> General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required <del>Comprehensive Commercial</del> General Liability Insurance policy or its equivalent shall <del>name</del> include the State, its</p>

Section #	Proposed Exception/Provision	Proposed Response
	<p>New Jersey, Department of the Treasury, Division of Purchase &amp; Property, Contract Compliance &amp; Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates <del>and any notice of cancellation</del> shall be emailed to the State at:</p> <p><a href="mailto:cca.certificat@treas.nj.gov">cca.certificat@treas.nj.gov</a></p> <p>The insurance to be provided by the contractor shall be as follows:</p> <p>A. Occurrence Form <del>Comprehensive Commercial</del> General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence <del>as a combined single limit</del> for bodily injury and property damage. The above required <del>Comprehensive Commercial</del> General Liability Insurance policy or its equivalent shall <del>name</del> <u>include</u> the State, its officers, and employees as “Additional Insureds” <u>as their interests may appear</u> and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by <del>the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage</del> <u>ISO occurrence form CG 00 01</u>;</p> <p>B. <u>Business</u> Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per <del>occurrence</del> <u>accident</u> as a combined single limit. The State must be <del>named</del> <u>included</u> as an “Additional Insured” <u>as their interests may appear</u> and a blanket additional insured endorsement or its equivalent must be</p>	<p>officers, and employees <u>as their interests may appear</u> as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by ISO occurrence form CG 00 01;</p> <p>Section 4.2, paragraph B, of the State Standard Terms and Conditions is modified as follows:</p> <p><u>Business</u> Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per <del>occurrence</del> <u>accident</u> as a combined single limit. The State must be <del>named</del> <u>included</u> as an “Additional Insured” <u>as their interests may appear</u> and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State’s behalf or on State controlled property;</p>

Section #	Proposed Exception/Provision	Proposed Response
	<p>provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;</p> <p>C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:</p> <ol style="list-style-type: none"> <li>1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE <del>ACCIDENT</del>;</li> <li>2. \$1,000,000 DISEASE EACH EMPLOYEE; and</li> <li>3. \$1,000,000 DISEASE AGGREGATE LIMIT.</li> </ol> <p>A. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director <u>which will be subject to prior approval by the Contractor</u>; and</p> <p>B. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.</p> <p>Professional Liability Insurance: Contractor shall carry Errors and Omissions, <del>Bankers</del> Professional Liability Insurance <del>and/or</del> <u>or</u> Professional Liability Malpractice Insurance sufficient to protect Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$10,000,000 <del>and in such policy forms as shall be approved by DOI. If Contractor has claims made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional</del></p>	

Section #	Proposed Exception/Provision	Proposed Response
	<p><del>Malpractice Insurance carrier an endorsement for retroactive coverage to the date of Contract commencement.</del></p>	
State of New Jersey Standard Terms and Conditions – 5.5 – Change in Law	We propose to clarify that any change to the contract is subject to mutual agreement by the parties.	DOI will not make any changes to Section 5.5 of the State Standard Terms and Conditions.
State of NJ Standard Terms and Conditions – 5.8 – Subcontracting or Assignment	We propose to add and clarify that only those third party vendors that are hired specifically in connection with the securities lending agreement per the Customer’s request will be subject to such requirements. Third party vendors hired in the Bidder’s ordinary course of business will not be considered to be “subcontractors” subject to the requirements in Section 5.8 of State of NJ Standard Terms and Conditions.	Any third party vendors that provide services directly to DOI pursuant to the RFP are subject to the requirements of Section 5.8, regardless of whether or not such vendors are hired per DOI’s request.
State of NJ Standard Terms and Conditions – 3.4 (Building Service), 3.5 (The Worker and Community Right to Know Act), 3.7 (Buy American), 5.11 (Performance Guarantee of Contractor), 5.12 (Delivery Requirements)	We propose to either remove these provisions or indicate that they are not applicable to the securities lending services proposed to be performed by Bidder.	DOI agrees that these sections are not applicable to the securities lending services proposed to be performed by Bidder.
State of NJ Standard Terms and Conditions – 2.3, 3.2, 3.3(c)	We propose to clarify that these provisions are not applicable to Bidder and its employees.	DOI agrees that Sections 2.3 and 3.2 are not applicable to the securities lending services proposed to be performed by Bidder and its employees. However, Section 3.3 (c) remains in effect as this language is required by N.J.S.A. 10:2-1.
State of NJ Standard Terms and Conditions – 2.9 (Set-off for	We propose to clarify that the following exception should be added: “except for taxes that are being contested in good faith by appropriate proceedings.”	Section 2.9 merely restates the requirements of N.J.S.A. 54:49-19. DOI has no authority to amend legislation to include Bidder’s

<b>Section #</b>	<b>Proposed Exception/Provision</b>	<b>Proposed Response</b>
State Tax)		proposed language. Note that the statute provides for a right to a hearing following timely protest of any proposed tax setoff.
State of NJ Standard Terms and Conditions – 5.13 (Applicable Law and Jurisdiction)	We propose to clarify that Section 5.13 of State of New Jersey Standard Terms and Conditions shall be modified by Section 10.4 of the attached securities lending agreement (including an express waiver of sovereign immunity).	DOI rejects Section 5.13 of the State Terms and Conditions. DOI has no authority to expand the State’s liability beyond the extent provided by statute or otherwise limit the State’s sovereign immunity.
State of NJ Standard Terms and Conditions – 5.16 (Assignment of Antitrust Claims)	We propose that this would only apply to the particular goods or services purchased or acquired under the securities lending agreement and other related agreements entered into by the parties pursuant to the RFP.	As stated in Section 5.16 of the Standard Terms and Conditions, the provision only applies to anti-trust claims or causes of action “relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.”