



State of Delaware
Office of Auditor of Accounts

Request for Proposal

For

Review and Audit Services
Professional Services

Date

3/9/2020

AOA20-CPA-001-RVWSVCS

by

State of Delaware
Office of Auditor of Accounts
Townsend Building, Suite 1
401 Federal Street
Dover, Delaware 19901

Deadline to Respond: 3:00 p.m. (EST), March 30, 2020

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1. Introduction

- 1.1 In accordance with 29 *Del. C.* Chapter 69, Subchapter VI, *Professional Services*, the Office of Auditor of Accounts (“AOA”) is publishing this Request for Proposal (“RFP”) and seeking proposals (“Proposals”) from qualified certified public accounting firms (“Firms”) for services described in this RFP at Section 4. Nature of Services Required.
- 1.2 There is no expressed or implied obligation for AOA to reimburse Firms for any costs or expenses incurred in preparing Proposals in response to this request, and AOA will not pay any costs or expenses incurred by any Firm associated with any aspect of responding to this RFP, including Proposal preparation, printing, delivery, or the negotiation process. Additionally, no indirect reimbursements (e.g., in the form of credits or reductions to any agreed upon compensation) will be made to any Firm by AOA for any such costs or expenses.
- 1.3 Public announcement of this RFP has been made in accordance with 29 *Del. C.* § 6981.
- 1.4 A mandatory pre-bid meeting has not been established for this RFP and is not required.
- 1.5 This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov. Paper copies of this RFP will not be provided by AOA or otherwise available.

If AOA determines that is necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware Procurement website at www.bids.delaware.gov. The terms of this RFP and any addenda are controlling and any statement related to this RFP made by any State of Delaware employee, contractor, or its agents does not bind AOA.

2. Proposal and Bid Submission Process

- 2.1 All questions regarding this RFP must be submitted in writing and must be received by 4:00 p.m. EST on March 16, 2020 via e-mail directly to AOA’s Designated Contact:

Elizabeth Vasilikos
Deputy Auditor
Elizabeth.Vasilikos@delaware.gov

If a Firm is seeking clarification regarding a specific aspect of the RFP, the Firm must cite the section and page number for reference. Answers to all submitted questions will be posted on www.bids.delaware.gov in the same manner as this RFP.

- 2.2 The lowest bid is not the deciding or the most significant factor in awarding professional services contracts. Any Firm identifying contingencies will have its proposed cost adjusted in relation to others that do not include the contingency so that it is comparable from a cost

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perspective. Proposals that include sufficient details and realistic hours are likely to receive a higher score overall.

- 2.3 The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of responses to this RFP. Firms shall not contact the State’s consultant or legal counsel on any matter related to the RFP. Such contact may also result in the elimination of the Proposal from further consideration and award.
- 2.4 The *Minimum Requirements Section*, *Proprietary Section*, and *Cost Section* of the Proposal must be submitted in **three** separate PDF searchable files. The *Minimum Requirements* and *Proprietary Sections* can be submitted in the same email; however, the *Cost Section* of the Proposal must be submitted in a separate email. The two email subject lines should clearly state “**Minimum Requirements and Proprietary Sections**” and “**Cost Section.**” Proposals must be sent to AOAContracting@delaware.gov on or before **3:00 p.m. EST on March 30, 2020** (the “Submission Deadline”). Any Proposal received after the Submission Deadline will not be considered and will be rejected. The Firm bears all risk of delays in delivery.

AOA will provide an email response of acknowledgement for each email received.

A Firm may modify or withdraw its Proposal by written request, provided that both the request and Proposal are received by AOA prior to the Submission Deadline. Any changes, amendments, or modifications to a Proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment, or modification to a previously submitted Proposal. Changes, amendments, or modifications to Proposals shall not be accepted or considered after the Submission Deadline.

All Proposals shall become the property of AOA upon receipt and are deemed firm offers at that time unless an amended Proposal is submitted prior to the Submission Deadline.

- 2.5 AOA will not conduct a public opening of Proposals but will maintain a public log of the names of all Firms that submitted Proposals. AOA’s evaluation of the Proposals will begin shortly after the Submission Deadline.

All documents submitted as part of the Proposal will be treated as confidential during the evaluation process. As such, Proposals will not be available for review by anyone other than AOA’s Proposal Evaluation Team or its designated agents, as well as AOA’s legal counsel. The content of Proposals will not be disclosed unless such disclosure is mandated by the State of Delaware Freedom of Information Act, Title 29, Delaware Code, Chapter 100. Once a written Proposal is received by AOA and a decision on contract award is made, the content of selected and non-selected Proposals will likely become subject to FOIA’s public disclosure obligations.

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AOA expects to receive Proposals that include proprietary information, such as services that may not be provided by other Firms. The Firm must include this information in the Proprietary Section of the Proposal.

A Firm's statement or position as to the confidentiality of any portion of its Proposal shall not be binding on the State. The State shall independently determine the validity of any Firm's confidentiality designation. Any Firm submitting a Proposal or using the procedures discussed herein expressly accepts AOA's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Firms assume the risk that confidential business information included within a Proposal may enter the public domain.

Firms shall be advised that as a publically bid contract, no Firm shall retain the right to declare its pricing confidential.

- 2.6 Non-conforming Proposals, defined as those that do not meet the requirements of this RFP, will not be considered. AOA, in its sole discretion, shall determine whether a Proposal conforms to the requirement of this RFP.
- 2.7 AOA expects that Firm can fully meet and fulfill the representations made in its Proposal and do so in a timely manner. Proposals must be realistic and must represent the best estimate of time, materials, and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.
- 2.8 A Firm is fully responsible for the completeness and accuracy of its Proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of the Firm. Should the Firm find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, the Firm shall notify AOA's Designated Contact, in writing, of such findings at least ten (10) days before the Proposal opening. This will allow issuance of any necessary addenda. It will also help avoid the opening of a defective Proposal and disclosure of a Firm's Proposal upon which award could not be made. All unresolved issues should be addressed in the Proposal.
- 2.9 AOA reserves the right to retain, accept, or reject any or all Proposals or any part of any Proposal, and, in its sole judgment and discretion, determine the merit and qualifications of each product offered, or to solicit new Proposals on the same project or on a modified project which may include portions of the originally proposed project, all or any of which as AOA may deem necessary in the best interest of the State of Delaware and as permitted under law.
- 2.10 By submitting a Proposal, the Firm acknowledges that it has carefully read all sections of this RFP, including all forms, schedules, and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

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- 2.11 This RFP will become part of the awarded and executed contract and its terms will be enforced as such.
- 2.12 AOA reserves the right to cancel this RFP at any time during the procurement process, for any reason or for no reason. AOA makes no commitments expressed or implied, that the publication of this RFP and the solicitation and submission of Proposals thereunder will result in a business transaction with any Firm.

This RFP does not constitute an offer by AOA. A Firm's participation in this process may result in the Firm's selection ("Selected Firm") by AOA to engage in further discussions and negotiations in furtherance of the execution of a contract. The commencement of such negotiations does not, however, signify a commitment by AOA to execute a contract nor to continue negotiations. AOA may terminate negotiations at any time and for any reason, or for no reason.

- 2.13 The final award of a contract is subject to approval by the State of Delaware Auditor of Accounts. In accordance with State law, the Auditor of Accounts has the sole right to select the successful Firm(s) for award, to reject any Proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced Proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

After the Evaluation Committee reports its recommendation, and once the contract terms and conditions have been negotiated and finalized, AOA will award the contract. Notice in writing to a Firm of the acceptance of its Proposal by AOA and the subsequent full execution of a written agreement between the Firm and AOA will constitute a legal relationship between the parties, and no Firm will acquire any legal or equitable rights or privileges until the occurrence of both such events.

AOA is not obligated to award a contract to the Firm that submits the lowest bid or to the Firm that receives the highest total point score, rather the contract will be awarded to the Firm whose Proposal is the most advantageous to the State of Delaware, as determined by AOA in its sole discretion.

- 2.14 Once AOA has selected a Firm to engage in contract discussions and negotiations with AOA, all Firms that submitted a Proposal within the established RFP deadline will be notified and the contract discussions and negotiations with the selected Firm will begin reasonably thereafter.

3. Term of Engagement

- 3.1 The contract period is for one year, with the option to renew the contract at AOA's request for one additional year, subject to the satisfactory negotiation of terms (including a cost acceptable to both AOA and the Selected Firm) and the annual availability of an

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appropriation by the General Assembly. AOA is under no express or implied obligation, legal or otherwise, to renew the contract.

4. Nature of Services Required

4.1 Description

a. Firm agrees to provide the following services (“Services”) to AOA under this Agreement: 1st or 2nd Level and Quality Control review of GAGAS audits and investigations as assigned by AOA. AOA requires Firm staff to be onsite at AOA’s Dover office to perform these tasks, and to allow AOA staff to participate and observe their work for learning and training opportunities. Firm also agrees that Firm staff will be available to AOA’s Senior Audit team for technical support, calls, and questions. Firms will also work on items deemed necessary within the scope of assigned engagement and assist with internal review. Firm agrees to work on site at least one day per week.

4.2 Engagement Standards

- a. To meet the requirements of this RFP, the services must be performed in accordance with the applicable standards established by the American Institute of Certified Public Accountants (AICPA) and *Government Auditing Standards*, issued by the Comptroller General of the United States.
- b. The Selected Firm must immediately notify AOA regarding any known or potential fraud, waste, or abuse identified during the assigned engagement, regardless of materiality. The course of action and additional procedures, if necessary, will be determined by AOA. Failure to notify AOA immediately about any identified known or potential fraud, waste, or abuse is considered contract non-compliance.

4.3 Contact and Location

- a. The engagement entity’s principal engagement contact will be Kathleen McGuiness, State Auditor, or a designated representative, who will coordinate the assistance to the Selected Firm. The Office of the Auditor of Accounts is located at 401 Federal St. Third Floor, Dover, DE 19901.

4.4 Other Engagement Information

- a. Confidentiality is required for all AOA engagements. AOA has sole authority to issue reports.
- b. Engagement documentation is the property of AOA and is required to be maintained in TeamMate.

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5. Time Requirements

5.1 Proposal Calendar

| | |
|-----------------------------------------|----------------|
| a. Request For Proposal issued | March 9, 2020 |
| b. Deadline for Proposal questions | March 16, 2020 |
| c. Answers to Proposal Questions Posted | March 23, 2020 |
| d. Deadline for Proposals | March 30, 2020 |

6. Proposals

6.1 No Proposal will move forward for full technical review and scoring unless the mandatory items, as outlined throughout this RFP, are fully addressed as requested.

7. Cost Section

7.1 The Cost Section must include (1) a transmittal letter with the name of the Firm and (2) written certification that (a) the Firm agrees to bill AOA only for actual work performed and out-of-pocket expense incurred during its performance of the engagement; (b) billings will be submitted in the format outlined in Section 13 of this RFP; (c) a statement that the Firm will accept reimbursement for travel, lodging, and subsistence at the prevailing rate used by the State of Delaware for its employees; and (d) the person signing the Proposal is duly authorized to represent the Firm, submit the bid, and to execute a contract with AOA.

7.1 The Cost Section must contain all detailed cost information relative to providing the services as described in this RFP, including hourly rates of those assigned.

7.2 If a Firm determines additional items are necessary for the completion of this engagement, including more detail to demonstrate its engagement process, the Firm may include these in its Proposals as separate line items. Any additional items will be considered individually and removed from the total cost when comparing the cost sections of Proposals.

7.3 The rates quoted in the Proposal shall remain fixed and binding on the Firm at least through the term of the initial contract. AOA reserves the right to ask for an extension of time if needed.

8. Minimum Requirements Section

8.1 There must be no dollars or total costs included in the Minimum Requirements Section of the Proposal. Inclusion of such information will result in disqualification of the Proposal.

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- 8.2 Each Proposal must be accompanied by a transmittal letter that briefly summarizes the Firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the Firm may have taken in presenting the Proposal.

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Firm shall not store or transfer non-public State of Delaware data outside of the United States.

AOA reserves the right to deny any and all exceptions taken to the RFP requirements.

- 8.3 The Minimum Requirements Section must address all the points outlined in the RFP in the following format:

a. Independence

The Firm must provide the following statement:

“Upon assignment of AOA projects subject to audit, the Firm will determine if it is independent of the engagement entity as defined by engagement standards in *Government Auditing Standards* issued by the Comptroller General of the United States.”

The Firm will assert this information to AOA prior to providing services for that particular engagement.

The Firm must also list and describe the Firm’s professional relationships involving the State of Delaware for the past five years, together with a statement explaining if each relationship constitutes a conflict of interest relative to performing a proposed engagement, or the Firm must state: “The Firm has had no professional relationships involving the State of Delaware within the last five years.”

In addition, the Firm must state that they will give AOA immediate written notice and obtain approval from AOA of any professional relationships with the entity subject to audit before they are entered into during the contract period.

b. License to Practice in Delaware and Delaware Business License

The Firm must provide:

- (1) Copies of valid Delaware CPA licenses or valid CPA licenses from a substantially equivalent jurisdiction as defined by the Uniform Accountancy Act (“UAA”) for all CPAs providing services to AOA. A CPA who holds a valid license from any jurisdiction that is not on the substantially equivalent list¹ published by the National Association of State Boards of Accountancy (“NASBA”) may obtain verification

¹ <http://nasba.org/licensure/substantialequivalency/>

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from NASBA that such individual's CPA qualifications are substantially equivalent to the UAA. A copy of such verification must be included in the Proposal.

AOA will also accept screen shots of online license verification from both the State Boards of Accountancy and CPAverify.org, as long as all relevant information is provided in the screen shot, including the name of the state. The Firm must also indicate the web address, with the date, from which this information was obtained.

- (2) A copy of a valid Delaware firm professional license, also known as a permit to practice, issued by the State Board of Accountancy. AOA will accept the Firm professional license in the same manner as described above for individual CPA licenses.
- (3) A copy of a current State of Delaware business license for the Firm, issued by the Delaware Division of Revenue.

c. Firm Qualifications

The Firm must state the size of the Firm, the size of the Firm's governmental staff, the location of the office from which the services will be performed, and the number and nature of the professional staff providing the services.

d. Peer Review

The Firm must submit a copy of the most current peer review and a statement whether the quality control review included a government engagement. The Firm must be in compliance with GAGAS peer review requirements.

e. Suspension and Debarment

The Firm must certify that, within the past five (5) years, the Firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not presently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business at Appendix A. In addition, the firm must state if it has been the subject of any disciplinary action or referral or inquiry from the American Institute of Certified Public Accountants (AICPA) or any State Board of Accountancy in the past five years.

Any Firm that is currently debarred, suspended, or ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

f. Partner, Supervisor, and Staff Qualifications and Experience

The Firm must identify the engagement partners, managers, supervisors who will be providing services to AOA.

For each person identified, the Firm must indicate whether the person is registered or licensed to practice as a Certified Public Accountant in the State of Delaware; provide

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information on the person's government auditing experience, including information on relevant continuing professional education for the past three years and membership in professional organizations relevant to the performance of this engagement; and discuss whether or not that person, within the past five years, has been the subject of any disciplinary action or inquiry from the American Institute of Certified Public Accountants (AICPA) or any State Board of Accountancy.

The Firm must also identify the extent to which staff to be assigned to the engagement reflect the State of Delaware's commitment to Affirmative Action.

With the express prior written permission of AOA, engagement partners and managers may be changed if those personnel leave the Firm, are promoted, are assigned to another office, or for other reasons provided, however, that said replacements have substantially the same or better qualifications or experience as the partners and managers they are replacing. Notwithstanding the foregoing, AOA retains the right to approve or reject replacements.

g. Statement on Subcontracting and Third Party Service Providers

The Firm must include a statement that the work will not be subcontracted and that none of the work products, including engagement documentation, will be subjected to a third party service provider.

h. Non-Collusion Statement

A Non-Collusion Statement, attached hereto as Appendix A, must be completed, signed by an authorized representative of the Firm, and included in the Minimum Requirements Section of the Proposal.

9. Proprietary Section

9.1 There must be no dollars or total costs included in the Proprietary Section of the Proposal. Inclusion of such information will result in disqualification of the Proposal.

9.2 The Proprietary Section must address all of the following:

a. Prior Engagements with AOA and the State of Delaware

All engagements performed for AOA and the State of Delaware (e.g., component units, related organizations) within the last three years must be listed in the Proposal. These engagements must be ranked on the basis of total staff hours and by type of engagement (e.g., audit, examination, other). The scope of work, date, engagement partners, total hours, the location of the Firm's office from which the engagement was performed, and the name and telephone number of the principal client contact must also be detailed.

b. Similar Engagements with Other Government Entities

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For the Firm office that will be assigned responsibility for the services, the Firm must list other entities receiving similar services in the last three years. These engagements must be ranked on the basis of total staff hours and must indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

c. Specific Engagement Approach

The Firm should demonstrate why the Firm is uniquely qualified to provide the services on behalf of AOA. Information presented in this section should include, but not limited to, innovative engagement approach, approach to identifying and testing effective controls, unique methods for utilizing software and preparing engagement documentation, and example reporting package templates. In an effort to prevent substandard engagements and to provide the highest quality service to Delaware taxpayers, AOA will award a higher score to Firms that utilize an innovative engagement approach. Any additional procedures that generate additional costs should be separately stated in the Cost Section.

The Proprietary Section must set forth a work plan including, but not limited to, the following, as applicable:

- (1) Discussion regarding any early planning and interim testing approaches the Firm uses to try to improve timeliness and efficiency of planning and fieldwork.
- (2) Sample methodology to the extent which sampling is to be or planned to be used.
- (3) Processes for evaluating and testing internal controls including plans for adequate coverage of information technology infrastructure and data integrity.
- (4) Process for project management, including (a) how milestones and delays are monitored and communicated and how adjustments to deliverable dates based on client delays are communicated to AOA and the engagement entity and (b) how staff resources are committed to meet AOA deadlines.
- (5) Processes to ensure the quality of the engagement.
- (6) Membership in the AICPA's Government Audit Quality Center (GAQC) during peer review. If a Firm has joined since the last peer review, it must disclose the membership date.

d. Examples of GAGAS findings

The Firm must include at least two (but no more than three) examples of findings issued under a GAGAS engagement. AOA will evaluate the quality of the findings including whether the findings are clear, concise, and easily understood by the public and management. The Firm is encouraged to provide examples not previously reviewed by AOA under a different engagement or contract.

e. Other work product examples

The Firm is encouraged to include examples of prior engagement plans, custom audit programs beyond canned or template audit programs, draft reporting packages, unusual

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analytical procedures, unique data or its procedures, and innovative engagement approaches for AOA's review during the evaluation process.

10. Evaluation Process

10.1 The Evaluation Committee shall be comprised of representatives from AOA. The Evaluation Committee shall determine which Firms meet the minimum requirements pursuant to the selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. Neither the lowest price nor highest scoring Proposal will necessarily be selected.

AOA reserves full discretion to determine the competence and responsibility, professionally and/or financially, of the Firm. The Firms is to provide, in a timely manner, any and all information that AOA may deem necessary to make a decision.

The Evaluation Committee shall make a recommendation to the State of Delaware Auditor of Accounts, who shall have final authority for the selection of a Firm, subject to the provisions of this RFP and 29 *Del. C.* § 6982, and to begin contract negotiations with the Selected Firm.

10.2 As stated above, no Proposal will move forward for full technical review and scoring unless the minimum requirements, as outlined throughout this RFP, are fully addressed. AOA will notify the Firm if the Firm's Proposal did not meet the minimum requirements.

10.3 During the evaluation process, AOA reserves the right to request additional information or clarification from Firms; however, a Proposal may not be modified as a result of such clarification requests. Additionally, AOA, at its discretion may request one or more Firms (but not necessarily every Firm) to make oral presentations as part of the evaluation process. All costs associated with participation in oral presentations are the Firm's sole responsibility.

10.4 The Evaluation Committee may contact any client or customer of the Firm, whether or not included in the Firm's list requested at Section 9.2 of this RFP, and use such information in the evaluation process.

10.5 The Evaluation Committee may negotiate with one or more of the qualified Firms during the same period and may, at its sole discretion, terminate negotiations with any and all Firms at any time.

a. Review of Proposals

Proposals that do not meet or comply with the instructions of this RFP may be considered non-conforming, deemed non-responsive, and be subject to disqualification at the sole discretion of the Evaluation Committee.

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The Evaluation Committee will use a point formula during the review process to score the Proposals. All assignments of points will be at the sole discretion of the Evaluation Committee. Each member of the Evaluation Committee will first score each Proposal by each of the criteria described in Sections 8, 9, and 10. The Evaluation Committee will then convene to review and discuss these evaluations and to combine the individual scores to arrive at an average technical score for each Firm. At any point, a Firm may be eliminated from further consideration for unacceptably low technical scores.

b. Evaluation Criteria

Only Firms meeting the minimum requirements of the RFP will have their Proposals evaluated and scored for both technical qualifications and cost.

All Proposals shall be evaluated using the same criteria and scoring process. Firms are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a Firm’s capabilities so the Firm should be detailed in its Proposal responses. The following criteria shall be used to evaluate Proposals:

| Criteria | Weight |
|-----------------------------------------------------------------------------------------------|---------------|
| <i>Technical</i> | |
| Prior experience with AOA or references | 8 |
| Quality of work plan, including realistic proposal and time estimates | 10 |
| Staffing experience, expertise, and education | 10 |
| Sufficient staff assigned | 8 |
| Sufficient plan to identify, evaluate, test, and rely on the most important internal controls | 8 |
| Adequate risk, materiality, and sampling consideration | 8 |
| Engagement approach and innovation, including sufficient detail | 8 |
| Quality of reporting package examples | 8 |
| Member of GAQC | 2 |
| <i>Cost</i> | 30 |
| Total | 100 |

Cost will not be the primary factor in the selection of any firm.

c. Reservation of Rights

The Evaluation Committee reserves the right to:

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- Select for contract or for negotiations a Proposal other than that with the lowest costs.
- Reject any and all Proposals or portions of the Proposals received in response to this RFP, or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in Proposals received.
- Request modification to Proposal from any or all Firms during the review and negotiation.
- Negotiate any aspect of the Proposal with any Firm and negotiate with more than one Firm at the same time.

The Evaluation Committee reserves the right to reject any Proposal as represented throughout this RFP and from a Firm that:

- Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- Has been convicted under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offenses indicating lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- Has been convicted or has had a civil judgment entered for a violation under State or federal antitrust statutes;
- Has violated contract provisions such as:
 - Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
 - Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
 - Has violated ethical standards set out in law or regulation;
 - Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including debarment by another government entity for cause listed in the regulations.

11. Contract Conditions and Considerations

11.1 After the Selected Firm and AOA have completed successful contract negotiations, the Selected Firm will be required to enter into a written agreement with AOA (the “Contract”). AOA reserves the right to incorporate standard State of Delaware contractual provisions into any Contract negotiated as a result of an accepted Proposal under this RFP. Any proposed modifications to the terms and conditions of the standard Contract are subject to review and approval by AOA. The Selected Firm must be referred to as “Contractor” in the Contract.

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- 11.2 The Selected Firm will be expected to enter negotiations with AOA, which will result in a formal Contract between the parties. This RFP and the Selected Firm's response to this RFP will be incorporated as part of any formal Contract.
- 11.3 If the Selected Firm to which the Contract is awarded fails to enter into the Contract as herein provided, the award will be annulled and, at AOA's sole discretion, an award may be made to another Firm.
- 11.4 The Selected Firm must agree to contractual provisions including, but not limited to, the following, as well as those negotiated and agreed to by the parties and not specifically described herein.

a. Term

The term of the Contract between the Selected Firm and AOA shall be for one year, with the option to renew the Contract at AOA's request for one additional year. The Contract may be terminated by AOA at any time by giving written notice to the Selected Firm of such termination. Upon such termination, the Selected Firm will be paid for the hours of work actually completed.

In the event the Selected Firm materially breaches any obligation under the Contract, the Selected Firm must not be relieved of any liability to the State of Delaware for damages suffered by it by virtue of any such breach. AOA may withhold any payments to Selected Firm for the purpose of set off for such damages.

If the Selected Firm violates any provision of this RFP or the Contract without prior discussion with (and prior written approval of exception by) AOA, including not submitting deliverables timely due to the fault of the Selected Firm or not providing an advance written request for extension for AOA's approval prior to the due dates, the Selected Firm shall be deemed to be in default and subject to liquidated damages in the amount of one-tenth of one percent (0.1%) of the total Contract price for each day following the violation up to ten percent (10%) of the total price. This provision does not preclude damages for breach of Contract for substandard work or damages as enumerated herein.

b. Non-Appropriation

If sufficient funds are not appropriated by the Delaware General Assembly, or other appropriate federal or State organization, to sustain in whole or in part the Selected Firm's performance under the Contract, or if such appropriation is reduced such that the amount of the appropriation is insufficient to sustain said performance, this Contract shall be null and void at the option of AOA. If such termination should occur, AOA shall advise the Selected Firm as soon as possible.

c. Notice

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Any notice to AOA required under this Contract must be in writing and sent by registered mail to:

Attention: Kathleen K. McGuiness
Auditor of Accounts
Townsend Building, Third Floor
401 Federal Street
Dover, DE 19901

d. Formal Contract and Purchase Order

The Selected Firm must execute a Contract incorporating the terms of this RFP within twenty business days after commencement of negotiations. When purchase orders are applicable, the Selected Firm must not begin any service prior to receipt of a State of Delaware signed purchase order requesting service, properly processed through the State of Delaware Division of Accounting and the engagement entity, where applicable. The purchase order must serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the Selected Firm.

e. Indemnification

1. General Indemnification

The Firm agrees that, in the event it is awarded a Contract, the Firm will defend, indemnify, and save harmless the State from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims, including reasonable attorney's fees, brought against the State arising out of or resulting from the performance of the auditing services by the Selected Firm under the Contract resulting from this RFP to the extent caused by the Selected Firm's negligence or arising from any breach or default by the Selected Firm under such Contract. Further, in no event will the Selected Firm indemnify and hold harmless the State from any claims or liabilities resulting solely from the acts of the State.

2. Proprietary Rights Indemnification

The Selected Firm shall warrant that all equipment, software, documentation, services, and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret, or other proprietary rights of any third party. In the event of any claim, suit, or action by any third party against the State of Delaware, AOA shall promptly notify the Selected Firm in writing and Selected Firm shall defend such claim, suit, or action at Selected Firm's expense, and the Selected Firm shall indemnify the State of Delaware against any loss, cost, damage, expense, or liability arising out of such claim, suit, or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods), products or other intellectual property used or furnished by the Selected Firm (collectively

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“Products”) is, or in the Selected Firm’s reasonable judgment is likely to be, held to constitute an infringing product, the Selected Firm shall at its sole expense and option either:

- a. Procure the right for the State of Delaware to continue using the Product(s);
- b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the Contract; or
- c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the AOA agrees to and accepts in writing.

f. Compliance

In performance of the Contract, the Selected Firm is required to comply with all applicable federal, state, and local laws and regulations of the jurisdiction in which the Contract is performed, as well as all applicable professional conduct rules and guidelines. The Selected Firm will also comply with any policies, guidelines, and requirements of the jurisdiction in which the Contract is performed, provided that such policies, guidelines, and requirements are identified to the Selected Firm by the jurisdiction and the Selected Firm states, in writing, that it can comply. The cost of permits and other relevant costs required in the performance of the Contract shall be borne solely by the Selected Firm. For the duration of the engagement, the Selected Firm must be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301(b) and all other applicable statutes and regulations.

The Selected Firm will warrant that it possesses, or will secure at its own expense, all personnel and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal and State laws, and County and local ordinances, regulations, and codes. All of the services required hereunder shall be provided by or performed by the Selected Firm or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services. In accordance with 29 *Del. C.* § 6984, information regarding the award of the Contract will be given to the Delaware Division of Revenue.

AOA reserves the right to audit conformance to the Contract terms and may perform this audit with a third party at its discretion. The Selected Firm shall be under no obligation to permit an audit to the extent that such audit would violate applicable professional standards or undermine the integrity of the audit.

g. Non-Disclosure and Data² Security Agreement

² For the purposes of the contract (including the Non-Disclosure & Data Security Agreements, if applicable), “data” does not include audit documentation required by the auditing standards.

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No services or other related work under this Contract shall be subcontracted or performed by a third party service provider to complete the engagement. Notwithstanding the foregoing, the Selected Firm may use third parties to provide administrative and operational support to the Selected Firm's business operations, none of which includes the services to be performed by the Selected Firm under this Contract. All of these third party service providers are subject to confidentiality obligations to protect the confidentiality of client data. Such entities may be located within or outside the United States; however, all AOA or State data, to the extent stored or housed by such third party vendors, shall be stored or housed, in the "cloud"³ or otherwise, within the United States as required by the Confidentiality and Non-Disclosure Agreement. This includes backup data and disaster recovery locations. The Selected Firm shall be fully responsible to the State for any such third party service providers, including compliance with the Selected Firm's obligations set forth in the Confidentiality and Non-Disclosure Agreement if awarded the Contract, the Selected Firm must agree to the terms specified in Appendix B prior to the commencement of the engagement. The Selected Firm and its employees are forbidden from signing any agreements related to this engagement (e.g., non-disclosure agreements, data usage agreements, etc.) that are not presented directly by AOA.

h. Confidentiality of Information

Any reporting packages, information, data, etc. given to, prepared, or assembled by the Selected Firm under this Contract shall not be released or made available to any individual or organization by the Selected Firm without the prior written approval of The State Auditor. All information must be properly secured to prevent unauthorized access in accordance with Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, the Privacy Act of 1974 (as amended by the Computer Matching and Privacy Protection Act of 1988), the Federal Information Security Management Act of 2002, the Social Security Administration's "Information System Security Guidelines for Federal, State, and Local Agencies Receiving Electronic Information from the Social Security Administration," and related National Institute of Standards and Technology (NIST) guidelines. Notwithstanding the foregoing, the Selected Firm is authorized to disclose any information related to this Contract when required to by law, legal process, or applicable professional standards.

All Selected Firm staff working on this engagement are/may be required to complete a State of Delaware sponsored cyber security computer based training prior to the commencement of work. AOA will provide access to and instructions for training completion. The Selected Firm must submit proof of completion for each staff member in order to receive access.

³ The National Institute of Standards and Technology (NIST) defines cloud computing as a "model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort..."

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Audit workpapers, summaries, and similar records must be retained electronically for at least five (5) years after the completion of the engagement.

At the end of the engagement all non-work paper documentation (documents provided by the State of Delaware to Selected Firm) must be destroyed in all forms (e.g. disk, CD, DVD, paper) except those items required for audit documentation purposes.

i. Use of Work Product

All reporting packages developed under this Contract are the sole and exclusive property of the State, and the State has the exclusive right to their use. The Firm shall seek written permission to use any product created under this Contract.

j. Independent Contractors

The parties to the Contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this Contract to create an agency, partnership, joint venture, or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding, and all other similar matters. Neither party shall be liable for any debts, accounts, obligations, or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums, or any income or other similar taxes.

Location of work for the Firm's contractual support personnel shall be at AOA's sole discretion. AOA may provide working space and sufficient supplies and material to augment the Selected Firm's services.

k. Temporary Personnel are not State Employees

The Selected Firm agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Contract shall remain the employee(s) of the Selected Firm for all purposes including any required compliance with the Affordable Care Act by the Selected Firm. The Selected Firm agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Contract must be provided any benefits, including any healthcare benefits by the State of Delaware and the Selected Firm agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Contract, the Selected Firm agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

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Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this RFP, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Selected Firm's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. The Selected Firm will waive any separation fee provided an employee works for both the firm and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

1. Insurance

The Selected Firm recognizes that it is operating as an independent contractor, and not an employee of the State of Delaware, and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Selected Firm's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Selected Firm in its negligent performance under this Contract.

The Selected Firm shall maintain the following insurance during the term of this Contract:

- Worker's Compensation and Employer's Liability Insurance in accordance with applicable law; and
- Commercial General Liability - \$1,000,000.00 per occurrence / \$3,000,000 per aggregate; and either
 - Professional Liability - \$1,000,000.00 per claim / \$3,000,000 per aggregate; or
 - Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence / \$3,000,000 per aggregate; and
- Cyber Liability Insurance as required by Appendix F of this RFP.⁴

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to AOA in accordance with the policy provisions.

Before any work is done pursuant to this Contract, the Certificate of Insurance specified in this section, referencing the Contract number stated herein, shall be filed with AOA. The certificate holder is as follows:

⁴ At minimum, the Firm should describe what specific clauses, if any, in its General or Professional Liability insurance policies would satisfy this requirement.

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Townsend Building, Third Floor
401 Federal Street
Dover, DE 19901

In no event shall the State of Delaware or AOA be named as an additional insured on any policy required under this Contract.

m. Non-Discrimination and Sexual Harassment

In performing the services subject to this Contract the Selected Firm, as set forth in 19 *Del. C.* §711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The Selected Firm shall comply with all federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practice.

The Selected Firm shall establish and maintain a written sexual harassment policy that addresses not only the Selected Firm's employees but also employees of the engagement entity. The Selected Firm shall inform its employees of the policy, which must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

n. Covenant Against Contingent Fees

The Selected Firm warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement of understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees and bona-fide established commercial or selling agencies maintained by the Firm for the purpose of securing business. For breach or violation of this warranty, AOA may annul the Contract without liability or at its discretion to deduct from the Contract cost or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

o. Contract Documents

The RFP, the Purchase Order, and the executed Contract, including any supplemental documents, between AOA and the Selected Firm must constitute the Contract between AOA and the Selected Firm. In the event there is any discrepancy between any of these Contract documents, the following order of documents governs so that the former prevails over the latter: Contract, RFP, the Selected Firm's response to the RFP, and the Purchase Order. No other documents shall be considered. These documents contain the entire agreement between AOA and the Selected Firm. The Selected Firm

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agrees to be bound by the terms of this RFP pending final execution of the Contract by the parties.

p. Applicable Law

The laws of the State of Delaware must apply, except where Federal law has precedence. The firm consents to exclusive jurisdiction in the State of Delaware and agrees that any litigation relating to this Contract must be filed and litigated in a court in the State of Delaware.

In submitting a Proposal, the Selected Firm certifies that it complies with all federal, State, and local laws applicable to its activities and obligations including:

1. The laws of the State of Delaware;
2. The applicable portion of the Federal Civil Rights Act of 1964;
3. The Equal Employment Opportunity Act and the regulations issued there under by the federal government;
4. A condition that the Proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. That programs, services, and activities provided to the general public under resulting Contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If the Selected Firm fails to comply with (1) through (5) of this paragraph, AOA reserves the right to disregard the Proposal, terminate the Contract, or consider the Selected Firm in default.

The Selected Firm shall keep itself fully informed of and shall observe and comply with all applicable existing federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

q. Scope of Contract

If the scope of any provision of the Contract is deemed too broad in any respect whatsoever to permit enforcement to its full extent, then such provision must be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Contract must not thereby fail, but the scope of such provisions must be curtailed only to the extent necessary to conform to the law.

r. Collusion or Fraud

Any evidence of agreement or collusion among firms and prospective firms acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such firms void.

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By responding, the Selected Firm shall be deemed to have represented and warranted that its Proposal is not made in connection with any competing firm submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the Selected Firm did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the Selected Firm's Proposal preparation or submission.

Advance knowledge of information which gives any Firm any advantage over any other interested Firm(s), in advance of the opening of Proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular Proposal.

s. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. If the Selected Firm is found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a Contract resulting from this RFP, the Selected Firm shall have its Proposal immediately rejected and shall be barred from further participation in this RFP.

All contact with State of Delaware employees, contractors, or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum, and conditions set forth in this RFP.

t. Solicitation of State Employees

Until the Contract is awarded, the Selected Firm shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employment in order to accept employment with the Selected Firm, its affiliates, actual or prospective contractors, or any person acting in concert with firm, without prior written approval of AOA. Solicitation of State of Delaware employees by the Selected Firm may result in rejection of the firm's Proposal.

This paragraph does not prevent the employment by a firm of a State of Delaware employee who has initiated contact with the Selected Firm. However, State of Delaware employees may be legally prohibited from accepting employment with the Selected Firm or its subcontractor(s) under certain circumstances. The Selected Firm may not knowingly employ a person who cannot legally accept employment under State or federal law. If the Selected Firm discovers that they have done so, they must terminate that employment immediately.

The Selected Firm shall not permit a former State employee, State officer, or honorary State official to represent or assist the Selected Firm on State matters related to this Contract for a period of two (2) years after termination of employment or appointed

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status with the State, where that person (a) gave an opinion, (b) conducted an investigation, or (c) were otherwise directly and materially responsible. (29 Del. C. §5805(d))

u. Firm Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the Selected Firm. The Selected Firm must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

v. Firm Background Check Requirements

The Selected Firm that accesses State property or comes in contact with vulnerable populations, including children and youth, shall be required to complete background checks on all employees serving the State's on premises Contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

Delaware Sex Offender Central Registry at:
<https://sexoffender.dsp.delaware.gov/>

Individuals who are listed in the registry shall be prevented from direct contact in the service of an awarded State Contract, but may provide support or off-site premises service for the Selected Firm. Should an individual be identified and the Selected Firm believes its employee's service does not represent a conflict with this requirement, may apply for a waiver to AOA. AOA's decision to allow or deny access to any individual identified on a registry database is final and at the AOA's sole discretion.

All Selected Firm staff working on this engagement are/may be required to have a criminal background check completed through a process approved by AOA at the Selected Firm's expense. At AOA's request, the Selected Firm shall provide a list of all employees serving an awarded Contract. Prior to staff commencing any work on any part of this contract, each staff member must be required to sign the form at Appendix C of this RFP and submit it to AOA directly as part of the Contract documentation and complete a successful criminal background check. If AOA determines that, due to criminal convictions reported on the background check, a staff member cannot provide services, the Selected Firm shall remove such staff from the engagement at the request of AOA.

Individual Contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the Contract scope of work or be a matter of common law.

w. Costs and Payment Schedules

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All Contract costs must be as detailed specifically in the Cost Section of the Selected Firm's Proposal. No charges other than as specified in the Proposal shall be allowed without written consent of AOA. The Proposal costs shall include full compensation for all taxes that the Selected Firm is required to pay.

AOA will require a payment notice as detailed in Section 13 of this RFP. Payments for services will not be made in advance of work performed. AOA may require holdback of Contract monies until acceptable performance is demonstrated (as much as 25%).

12. Additional Services

- 12.1 If, during the course of the engagement as assigned, the Selected Firm suspects or has reason to suspect that there will be significant delays in the timing of the work due to the actions of the engagement entity, such as not providing requested items in a timely manner or not adhering to the agreed-upon time schedule discussed at the entrance conference, the Selected Firm must immediately notify AOA in writing. AOA and the Selected Firm will discuss the issues and develop a solution for completing the engagement.
- 12.2 If it becomes necessary for AOA to request the Selected Firm to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any reporting package issued on this engagement, then such additional work must be performed only if set forth in a Contract addendum between AOA and the Selected Firm. Any such additional work agreed to between AOA and the Selected Firm must fall within the scope of this RFP and be performed at the same rates set forth in the schedule of fees and expenses included in the cost section of the Proposal. Further, if these delays cause the Selected Firm to perform additional work, the AOA Liaison must approve any additional hours before the hours are incurred.

13. Notification and Manner of Payment

- 13.1 AOA agrees to pay the Selected Firm compensation calculated solely on the amount of engagement work performed by the Selected Firm's staff, based on actual hours billed and hourly rates as set forth in the Cost Section of the Selected Firm's Proposal, as well as approved out-of-pocket expenses.
- 13.2 Progress payments may be made no more frequently than once per calendar month.
- 13.3 The Selected Firm agrees to bill AOA for actual work-performed and out-of-pocket expenses incurred during its performance of the services. This is not a fixed-price Contract. The Selected Firm is not to advance bill for work not yet performed. AOA reserves the right to audit the Selected Firm's timekeeping records to ensure billing is appropriate and done after-the-fact.

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- 13.4 The invoice for each engagement must include the following: (1) the name of engagement entity/engagement as assigned (2) the sequential invoice number; (3) the purchase order number; (4) the total invoice amount; (5) a breakdown of each staff member, with actual hours for each person, as represented in the Selected Firm's Proposal, including the corresponding hourly rate; and (7) the amounts, descriptions, and dates of all out-of-pocket expenses for which reimbursement is requested.
- 13.5 The Selected Firm must submit all invoices in electronic format for AOA approval. No paper invoices will be accepted.
- 13.6 Any additional work outside of the Contract or for additional fees related to the Contract is not permitted without the AOA Liaison's knowledge and approval.

14. Dispute Resolution

- 14.1 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation between executives who have authority to settle the controversy. All offers, promises, conduct, and statements, whether oral or written, made in the course of the negotiation by any of the parties, its agents, employees, experts, and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable may not be rendered inadmissible. If the matter is not resolved by negotiation, then the matter will proceed to mediation as set forth below.
- 14.2 Any disputes, claims or controversies arising out of or relating to this Contract, and not resolved through resolution pursuant to Section 14.1 may be submitted to mediation by a mediator agreed upon by the parties for resolution. Each party reserves the right to proceed directly to nonbinding arbitration without mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, except as may be required for disclosure to professional or regulatory bodies or in a related confidential mediation or arbitration. Each party shall bear its own costs of mediation, or arbitration, including attorneys' fees. The arbitration proceeding shall take place in New Castle County, State of Delaware unless the parties mutually agree to a different location. The proceeding shall be governed by the provisions of the Federal Arbitration Act ("FAA") and will proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the American Arbitration Association ("AAA"), except that no pre-hearing discovery shall be permitted unless specifically authorized by the arbitrator. The arbitrator will be selected from AAA, JAMS, the Center for Public Resources, or any other internationally or nationally-recognized organization mutually agreed upon by the parties. Potential arbitrator names will be exchanged within 15 days of the parties' agreement to terminate or waive mediation, and the arbitration will thereafter proceed expeditiously. The arbitration will be conducted

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before a single arbitrator, experienced in accounting and auditing matters. The arbitrator shall have no authority to award non-monetary, equitable relief and will not have the right to award punitive damages. The award of the arbitration shall be in writing and shall be accompanied by a well-reasoned opinion. The award issued by the arbitrator may be confirmed in a judgment by any federal or State court of competent jurisdiction. The costs of the arbitrator shall be equally divided by the parties.

15. Press Releases or Public Disclosures

- 15.1 AOA reserves the right to pre-approve, in writing, any news or broadcast advertising releases concerning this RFP, the resulting Contract, the work performed, or any reference to AOA with regard to any project or Contract performance.
- 15.2 AOA will not prohibit or otherwise prevent the Selected Firm from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Selected Firm shall not use the State's seal, State Auditor Logo or imply preference for the solution or goods provided.

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Appendix A – Non-Collusion & Debarment Statement

This is to certify that the undersigned Firm has neither directly nor indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Proposal. The undersigned Firm further certifies that it is not a subcontractor to another Firm who also submitted a Proposal as a primary Firm in response to this RFP.

The undersigned authorized representative must be an individual who has legal authority on behalf of the Firm to enter into a formal agreement with the State of Delaware, Office of Auditor of Accounts.

Company Name: _____

Authorized Representative: _____ Title: _____

Address: _____

Phone Number: _____ Email address: _____

| Certification type(s) | Check all that apply |
|-------------------------------------------------------------|----------------------------------------------------------|
| Minority Business Enterprise (MBE) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Woman Business Enterprise (WBE) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Disadvantaged Business Enterprise (DBE) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Veteran Owned Business Enterprise (VOBE) | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Service Disabled Veteran Owned Business Enterprise (SDVOBE) | <input type="checkbox"/> Yes <input type="checkbox"/> No |

[The above table is for informational and statistical use only.]

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner, or proprietor been the subject of a Federal, State, or Local government suspension or debarment?

YES NO

If yes, please explain: _____

Signature: _____ Date: _____

SWORN TO AND SUBSCRIBED BEFORE ME this ____ day of _____, 20 ____

Notary Public: _____ Commission Expires: _____

City of _____ County of _____ State of _____

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Appendix B – Confidentiality and Non-Disclosure Agreement for Contracted CPA Firms

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is entered into as of [DATE] (“the Effective Date”) by and between the State of Delaware, Office of the Auditor of Accounts (the “AOA”), 401 Federal Street, Townsend Building, Third Floor, Dover, Delaware 19901 and [FIRM NAME] (the “Firm”), a Delaware [ENTITY TYPE (e.g. limited liability partnership)] with its place of business located at [FIRM ADDRESS] (collectively the “Parties”).

WHEREAS, AOA and the Firm have entered into a Professional Services Agreement (the “Engagement Agreement”) dated [DATE] and captioned as AOA contract number [XX-CPA-XX], under which Firm will provide [SERVICE] for AOA (the “Engagement”);

WHEREAS, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Engagement Agreement;

WHEREAS, during the course of and in conjunction with the Firm’s performance of its duties under the Engagement in accordance with the Engagement Agreement, the Firm will have access to and possession of certain State of Delaware (“State”) data, information and documents that AOA deems to be highly confidential, the unauthorized disclosure of which could expose AOA and the State to significant legal liability.

WHEREAS, AOA desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the Firm desires to provide such assurance and protections to AOA on the terms set forth herein; and

WHEREAS, AOA and the Firm represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, AOA and the Firm agree as follows:

1. As used herein, the following terms shall have the following meanings:
 - a. “Confidential Information” includes, with limitation, tax returns and related information, employment and employee performance records and any related documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement.
 - b. “Proprietary Information” includes, without limitation, request for quotes, cost or pricing data, government spending plan data, contractor technical proposal data, independent government cost

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estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of a system, application, network and access information, in the possession of the State or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

- c. Personally identifiable information (“PII”), in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B-101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver’s license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term “Personal Information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.
 - d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as “Protected Information.”
2. The State shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by the State in conjunction with the Engagement, regardless of format. The firm acknowledges and agrees that the Firm shall have no right, title, or interest in such data and information. Further, the Firm shall not access State user accounts or State data, except as required or permitted by the express terms of the Engagement Agreement or any otherwise permitted in writing by AOA.
 3. AOA agrees to specifically identify Protected Information in writing as confidential prior to providing to the Firm and strictly limit provision of Protected Information to that which is essential to the Firm’s performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, AOA shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to the Firm. The Firm shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, the Firm shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:
 - a. PII obtained by the Firm is and shall remain property of the State.
 - b. At no time shall any Protected Information or any other data or processes which either belongs to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by the Firm or any employee of the Firm for subsequent use in any transaction that does not involve the Engagement.

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- c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Engagement Agreement.
 - d. Protected Information shall be safeguarded by the Firm from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the Firm for safeguarding the Firm's own confidential information.
 - e. The Firm's desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.
 - f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Engagement Agreement.
 - g. All State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
4. No State data, including Protected Information, shall be stored or transferred outside of the United States by the Firm except to the extent permitted in the Engagement Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.
 5. The Firm shall not disclose any Protected Information to any person or entity except to the extent the Firm is permitted to disclose such information as provided in this Confidentiality Agreement or the Engagement Agreement.
 6. To the extent applicable, the Firm understands and acknowledges its responsibilities under 6 *Del. C. Ch. 12B* ("Computer Security Breach") and Appendix F of RFP AOA20-CPA-001-RVWSVCS. The Firm further understands and acknowledges the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. The Firm further acknowledges that 6 *Del. C. § 12B-104* sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
 7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, the Firm shall disclose to the Firm engagement partner and to AOA, in writing, the occurrence of such breach or intrusion and, to the extent the Firm is aware, the assets that might have been breached or disclosed.
 8. The Firm is bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. The Firm further understands that the State may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality Agreement shall affect the applicability or

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enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.* § 305); Health Insurance Portability and Accountability Act and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to Protected Information.

9. The Firm understands that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. The Firm understands that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the Firm staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.
10. Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) the State of Delaware is not at all permitted to agree to indemnify the Firm, directly or indirectly.
11. The Firm understands that it shall promptly contact AOA, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, except to the extent required by law, the Firm shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying AOA, in writing, unless prohibited by law from providing such notice.
12. The Firm understands that it and its employees may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.
13. The Firm agrees to safeguard any password or security codes provided to it and its employees during the course of the Engagement.
14. The Firm agree to follow its security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.
15. The Firm understands that it and its employees may be liable for any losses experienced by AOA or the State or any remediation costs to the extent required by law associated with a breach and that AOA and/or the State will pursue whatever legal means necessary to recover all such losses

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and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.

16. The Firm understands that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Engagement Agreement and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records in accord with professional standards, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to AOA upon request.
17. The Firm understands that it is expected to comply with sections 6.63 through 6.69 of the Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.
18. The obligations imposed herein do not extend to information or data which:
 - a. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
 - b. is determined to have been developed by the Firm independently of disclosures made hereunder; or
 - c. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.
19. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Engagement Agreement, the terms of this Confidentiality Agreement shall control.
20. The Firm's signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by AOA.

[FIRM NAME] (the "Firm"):

Printed Name:

Position:

Signature & Date:

[NOT TO BE COMPLETED UNTIL THE
CONTRACT HAS BEEN AWARDED]

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Appendix C – Confidentiality and Non-Disclosure Agreement for Individual Audit Staff

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is entered into as of [DATE] (“the Effective Date”) by and between the State of Delaware, Office of the Auditor of Accounts (the “AOA”), 401 Federal Street, Townsend Building, Third Floor, Dover, Delaware 19901 and [EMPLOYEE NAME] , employee of [FIRM NAME] (the “Firm”), a Delaware [ENTITY TYPE (e.g. limited liability partnership)] with its place of business located at [FIRM ADDRESS] (collectively the “Parties”).

WHEREAS, AOA and the Firm have entered into a Professional Services Agreement (the “Engagement Agreement”) dated [DATE] and captioned as AOA contract number XX-CPA-XX, under which Firm will provide [SERVICE] for AOA (the “Engagement”);

WHEREAS, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Engagement Agreement;

WHEREAS, during the course of and in conjunction with the Firm’s performance of its duties under the Engagement in accordance with the Engagement Agreement, the Firm will have access to and possession of certain State of Delaware (“State”) data, information and documents that AOA deems to be highly confidential, the unauthorized disclosure of which could expose AOA and the State to significant legal liability.

WHEREAS, AOA desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the Firm desires to provide such assurance and protections to AOA on the terms set forth herein; and

WHEREAS, AOA and the Firm represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

NOW THEREFORE, in consideration of the promises and mutual agreements herein, AOA and Firm agree as follow:

1. As used herein, the following terms shall have the following meanings:
 - a. “Confidential Information” includes, with limitation, tax returns and related information, employment and employee performance records and any related documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement.
 - b. “Proprietary Information” includes, without limitation, request for quotes, cost or pricing data,

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government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of a system, application, network and access information, in the possession of the State or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

- c. Personally identifiable information (“PII”), in the possession of AOA or otherwise obtained by or provided to the Firm in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B-101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver’s license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term “Personal Information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.
 - d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as “Protected Information.”
2. The State & AOA shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by the State in conjunction with the Engagement, regardless of format. I acknowledge and agree that I shall have no right, title, or interest in such data and information. Further, I shall not access State user accounts or State data, except as required or permitted by the express terms of the Engagement Agreement or any otherwise permitted in writing by AOA.
 3. AOA agrees to specifically identify Protected Information in writing as confidential prior to providing to me and strictly limit provision of Protected Information to that which is essential to the Firm’s performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, AOA shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to me. I shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, I shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:
 - a. PII obtained by me is and shall remain property of the State and AOA.
 - b. At no time shall any Protected Information or any other data or processes which either belongs to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by me for subsequent use in any transaction that does not involve the

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Engagement.

- c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Engagement Agreement.
 - d. Protected Information shall be safeguarded by me from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the Firm for safeguarding the Firm's own confidential information.
 - e. The Firm's desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.
 - f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Engagement Agreement.
 - g. All State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
4. No State data, including Protected Information, shall be stored or transferred outside of the United States by me except to the extent permitted in the Engagement Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.
 5. I shall not disclose any Protected Information to any person or entity except to the extent the Firm is permitted to disclose such information as provided in this Confidentiality Agreement or the Engagement Agreement.
 6. To the extent applicable, I understand and acknowledge my responsibilities under 6 *Del. C.* Ch. 12B ("Computer Security Breach") and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. I further acknowledge that 6 *Del. C.* § 12B-104 sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
 7. As soon as possible of the discovery of any security breach or actual suspicious intrusion involving State data, I shall disclose to the Firm engagement partner and to AOA, in writing, the occurrence of such breach or intrusion and, to the extent I am aware, the assets that might have been breached or disclosed.
 8. I am bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. I further understand that the State may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality Agreement shall affect the applicability or enforcement of the

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Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.* § 305); Health Insurance Portability and Accountability Act and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to Protected Information.

9. I understand that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. I understand that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the Firm staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.
10. Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) the State of Delaware is not at all permitted to agree to indemnify me or the Firm, directly or indirectly.
11. I understand that I shall promptly contact the Firm engagement partner and AOA, in writing, unless prohibited by law from providing such notice, upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to, State data. Further, except to the extent required by law, I shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the Firm engagement partner and AOA, in writing, unless prohibited by law from providing such notice.
12. I understand that I may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.
13. I agree to safeguard any password or security codes provided to me during the course of the Engagement.
14. I agree to follow the Firm's security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.
15. I understand the Firm and I may be liable for any losses experienced by the State or any remediation costs to the extent required by law associated with a breach and that the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any

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appropriate equitable relief to prevent unauthorized disclosures.

16. I understand that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Engagement Agreement and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records in accord with professional standards, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to AOA upon request.
17. I understand that I am expected to comply with sections 6.63 through 6.69 of the Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.
18. The obligations imposed herein do not extend to information or data which:
 - a. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
 - b. is determined to have been developed by the Firm independently of disclosures made hereunder; or
 - c. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.
19. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Engagement Agreement, the terms of this Confidentiality Agreement shall control.
20. My signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by AOA.

Individual Audit Staff:

Printed Name:

Position:

Signature & Date:

| |
|----------------------------------------------------------------------|
| <u>[NOT TO BE COMPLETED UNTIL THE CONTRACT HAS BEEN AWARDED]</u> |
|----------------------------------------------------------------------|

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Appendix D – Delaware Cloud Services Terms and Conditions Agreement

| | |
|-----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
|  | STATE OF DELAWARE DEPARTMENT OF TECHNOLOGY AND INFORMATION 801 Silver Lake Blvd., Dover, Delaware 19904 |
| DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT | |

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

XaaS Contract # _____, Appendix _____ between
 State of Delaware and _____ dated _____

| | Public Data | Non Public Data | Cloud Services (CS) Terms |
|-------|-------------|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | PROVIDER must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data. Clause CS2 is mandatory for all engagements involving non-public data. Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data. |
| CS1-A | | ✓ | Security Standard Compliance Certifications: The PROVIDER shall meet, and provide proof of, one or more of the following Security Certifications. <input type="checkbox"/> CSA STAR – Cloud Security Alliance – Security, Trust & Assurance Registry (Level Two or higher) <input type="checkbox"/> FedRAMP - Federal Risk and Authorization Management Program |
| CS1-B | | ✓ | Background Checks: The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a state-approved criminal background checks. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract, have no convictions, pending criminal charges, or civil suits related to any crime of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware. |
| CS1-C | | ✓ | Sub-contractor Flowdown: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein. |

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| | Public Data | Non Public Data | Cloud Services (CS) Terms |
|-----|-------------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CS2 | | ✓ | Breach Notification and Recovery: The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans’ Personally Identifiable Information (PII, as defined in Delaware’s <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless. |
| CS3 | | ✓ | Data Encryption: The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER’s encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware’s standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy. |
| CS4 | ✓ | ✓ | Notification of Legal Requests: The PROVIDER shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. With regard to State of Delaware data and processes, the PROVIDER shall not respond to subpoenas, service of process, and other legal requests without first notifying the State unless prohibited by law from providing such notice. |

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions :

| | |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| FOR OFFICIAL | <input type="checkbox"/> CS4 (Public Data) |
| USE ONLY | <input type="checkbox"/> CS1-A and CS4 (Non-Public Data) OR <input type="checkbox"/> CS1-B and CS1-C and CS4 (Non-Public Data) |
| | <input type="checkbox"/> CS2 (Non-public Data) <input type="checkbox"/> CS3 (SaaS, PaaS – Non-public Data) |

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By signing this Agreement, the Provider abides by all of the above Terms and Conditions.

Provider Name/Address (print): _____

Provider Authorizing Official Name (print): _____

Provider Authorizing Official Signature: _____

Date: _____

| |
|-----------------------------------------------------------------------------|
| <p><u>[NOT TO BE COMPLETED UNTIL THE CONTRACT HAS BEEN AWARDED]</u></p> |
|-----------------------------------------------------------------------------|

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Appendix E – Delaware Data Usage Terms and Conditions Agreement



STATE OF DELAWARE
DEPARTMENT OF TECHNOLOGY AND INFORMATION
801 Silver Lake Blvd., Dover, Delaware 19904

DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|------------|-------------|-----------------|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DU1 | √ | √ | Data Ownership | The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware. |
| DU2 | √ | √ | Data Usage | <p>PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State’s <i>Terms & Conditions Governing Cloud Services</i> policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information.</p> <p>Only duly authorized PROVIDER staff will have access to the State of Delaware data and may be required to obtain security clearance from the State. No party related to the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware.</p> |

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| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|------------|-------------|-----------------|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DU3 | ✓ | ✓ | Termination and Suspension of Service | <p>In the event of termination of the contract, the PROVIDER shall implement an orderly return (in CSV or XML or another mutually agreeable format), or shall guarantee secure disposal of State of Delaware data.</p> <p><i>Suspension of services:</i> During any period of suspension or contract negotiation or disputes, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data.</p> <p><i>Termination of any services or agreement in entirety:</i> In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data for a period of 90 days after the effective date of the termination. Within this 90-day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract. After such 90-day period, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data. Thereafter, unless legally prohibited, the PROVIDER shall dispose securely of all State of Delaware data in its systems or otherwise in its possession or control, as specified herein.</p> <p>Post-Termination Assistance: The State of Delaware shall be entitled to any posttermination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p> |
| DU4 | | ✓ | Data Disposition | <p>At the end of this engagement, PROVIDER will account for and return all State data in all of its forms, disk, CD / DVD, tape, paper, for example. At no time shall any data or processes that either belong to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the PROVIDER.</p> <p>When required by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. The PROVIDER shall provide written certificates of destruction to the State of Delaware.</p> |
| DU5 | | ✓ | Data Location | <p>The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.</p> |

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| | Public Data | Non Public Data | | DATA USAGE (DU) TERMS |
|------------|-------------|-----------------|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DU6 | | √ | Breach Notification and Recovery | The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (see DU7, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless. |
| DU7 | | √ | Data Encryption | The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this nonpublic data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy. |

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The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

FOR OFFICIAL USE ONLY DU 1 - DU 3 (Public Data Only) OR DU 1 - DU 7 (Non-public Data)

By signing this Agreement, the Provider abides by all of the above Terms and Conditions.

Provider Name/Address (print): _____

Provider Authorizing Official Name (print): _____

Provider Authorizing Official Signature: _____

Date: _____

[NOT TO BE COMPLETED UNTIL THE
CONTRACT HAS BEEN AWARDED]

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Appendix F – Cyber Responsibilities, Liability, and Insurance

A. Firm Protection of Customer Data

1. The Firm shall, at a minimum, comply with all Delaware Department of Technology and Information (DTI) security standards identified in this Request for Proposals and any resultant contract(s).

B. Definitions

Data Breach

1. In general the term “data breach” means a compromise of the security, confidentiality, or integrity of, or the loss of, computerized data for the State of Delaware that results in, or there is a reasonable basis to conclude has resulted in:
 - 1.1 The unauthorized acquisition of personally identifiable information (PII); or
 - 1.2 Access to PII that is for an unauthorized purpose, or in excess of authorization,
2. Exclusion
 - 2.1 The term “data breach” does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

Personally Identifiable Information (PII)

3. Information or data, alone or in combination that identifies or authenticates a particular individual.
 - 1.1 Such information or data may include, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records numbers), Criminal history, Citizenship status, Medical information, Financial Information, Usernames, Answers to security questions or other personal identifiers.
2. Information or data that meets the definition ascribed to the term “Personal Information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

Customer Data

1. All data including all text, sound, software, or image files provided to the Firm by, or on behalf of, Delaware which is occasioned by or arises out of the operations, obligations, and responsibilities set forth in this contract.

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Security Incident

1. Any unauthorized access to any Customer Data maintained, stored, or transmitted by Delaware or a third party on behalf of Delaware.

C. Responsibilities of Firm in the Event of a Data Breach

1. The Firm shall notify State of Delaware, Department of Technology and Information (DTI), and the Office of Auditor of Accounts (AOA) without unreasonable delay when the Firm confirms a data breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.
 - 1.1 Should the State of Delaware or the Firm determine that a data breach has actually occurred; the Firm will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by the Firm, DTI, and AOA.
 - 1.2 Should any corrective action resultant from Section B.1.1. above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall reside with DTI.
 - 1.3 In the event of an emergency the Firm may take reasonable corrective action to address the emergency. In such instances the corrective action will not be considered final until approved by DTI.
 - 1.4 For any record confirmed to have been breached whether such breach was discovered by the Firm, the State, or any other entity and notwithstanding the definition of personally identifiable information as set forth at 6 *Del. C.* § 12B-101 the Firm shall:
 - 1.4.1 Notify in a form acceptable to the State, any affected individual as may be required by 6 *Del. C.* § 12B-101 of the Delaware Code.
 - 1.4.2 Provide a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach.
 - 1.4.3 Meet and confer with representatives of DTI and AOA regarding required remedial action in relation to any such data breach without unreasonable delay.
 - 1.4.4 Bear all costs associated with the investigation, response and recovery from the breach, such as 3-year credit monitoring services, mailing costs, website, and toll free telephone call center services.

D. No Limitation of Liability for Certain Data Breaches

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1. Covered Data Loss

1.1 The loss of Customer Data that is not (1) Attributable to the instructions, acts or omissions of Delaware or its users or (2) Within the published recovery point objective for the Services

2. Covered Disclosure

2.1 The disclosure of Customer Data as a result of a successful Security Incident.

3. Notwithstanding any other provision of this contract, there shall be no monetary limitation of Firm's liability for the Firm's breach of its obligations under this contract which proximately causes a (1) Covered Data Loss or (2) Covered Disclosure, where such Covered Data Loss or Covered Disclosure results in any unauthorized public dissemination of PII.

E. Cyber Liability Insurance

1. An awarded Firm unable to meet the *Confidentiality and Non-Disclosure Agreement for Contracted CPA Firms* (see Appendix B) requirement of encrypting PII at rest shall, **prior to execution of a contract**, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded Firm shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s).
2. Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. The level applicable to this contract is: Level 1. Should the actual number of PII records exceed the anticipated number, it is the Firm's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that the Firm fails to obtain sufficient coverage, Firm shall be liable to cover damages up to the required coverage amount.

| Level | Number of PII records | Level of cyber liability insurance required (occurrence = data breach) |
|-------|------------------------|---------------------------------------------------------------------------|
| 1 | 1 – 10,000 | \$2,000,000 per occurrence |
| 2 | 10,001 – 50,000 | \$3,000,000 per occurrence |
| 3 | 50,001 – 100,000 | \$4,000,000 per occurrence |
| 4 | 100,001 – 500,000 | \$15,000,000 per occurrence |
| 5 | 500,001 – 1,000,000 | \$30,000,000 per occurrence |
| 6 | 1,000,001 – 10,000,000 | \$100,000,000 per occurrence |

F. Compliance

1. The Firm is required to comply with applicable security-related Federal, State, and Local laws.

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G. Media Notice

1. No media notice may be issued without the approval of the State.

H. Points of Contact – Data Breach

1. State of Delaware

Department of Technology and Information
Solomon Adote, Chief Security Officer
solomon.adote@delaware.gov; 302-739-9631

Office of Auditor of Accounts
Kathleen K. McGuinness, Delaware State Auditor
kathleen.mcguinness@delaware.gov; 302-739-5055