



State of Delaware
Department of Human Resources
Statewide Benefits Office

STATE EMPLOYEE BENEFITS COMMITTEE

**Request for Proposal for
Medical and Prescription Insurance Audit Services**

RFP Release Date – March 2, 2020

Intent to Bid Deadline – March 6, 2020, 1:00 p.m. Local Time

**Mandatory Pre-Bid Conference Call –
March 10, 2010, 11:00 a.m. Local Time**

Proposals Due – March 27, 2020, by 1:00 PM Local Time

DHR20004-Med_Audit

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I. Introduction

On behalf of the State of Delaware, the State Employee Benefits Committee (SEBC) is seeking proposals to review contract compliance for the medical insurance plans and the prescription drug program that provide benefits to approximately 39,000 active State employees and non-Medicare retirees, approximately 27,000 Medicare retirees, and 6,000 non-State participating group employees and their dependents. **For complete information about the State’s benefit programs and the plan designs applicable to the requested services, please go to <https://dhr.delaware.gov/benefits/>.**

- The medical insurance component of the GHIP is self-insured and is administered by two third-party administrators (TPAs), Aetna and Highmark Delaware¹. Interested vendors must have experience with a Blue Cross Blue Shield platform or Highmark Delaware along with Aetna.
- Pharmacy Benefit Manager (PBM) services are carved out and administered by Express Scripts (ESI). Interested vendors must have experience with ESI.
- Information about the number of covered persons and spend for both the medical and prescription benefits in Fiscal Year 2019 (July 1, 2018 – June 30, 2019) are located on Page 6.

- ❖ **Vendors may bid on either audit service or both.**
- ❖ **One vendor may bid on both services with one contractor being the primary contract holder and the other vendor being a subcontractor. The State will enter into only one contract.**
- ❖ **In the case of a subcontractor scenario, that vendor must respond to all applicable questions in the RFP.**

Public notice has been provided in accordance with 29 Del. C. § 6981. 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 available.

Important Dates (A full timeline is included in Section I.D.)

Contract Effective Date	October 1, 2020 or later
RFP Release Date	Monday, March 2, 2020

¹ The medical plan also includes a third-party network of surgeons of excellence that is administered directly by SurgeryPlus and is available to all plan participants regardless of whether they enrolled in an Aetna or Highmark Delaware medical plan option. SurgeryPlus is not included in the audit at this time.

Intent to Bid Due²	Friday, March 6, 2020 by 1:00 p.m. ET (Local Time)
Mandatory Pre-Bid Meeting (Conference Call)³	Tuesday, March 10, 2020 at 11:00 a.m. ET
Questions Due from Vendors	Friday, March 13, 2020 by 1:00 p.m. ET
Proposal Submissions Due	Friday, March 27, 2020 by 1:00 p.m. ET

A. Background and Overview

The SEBC is co-chaired by the Director of the Office of Management and Budget (OMB) and the Secretary of the Department of Human Resources (DHR). The Committee is comprised of the Director of the Office of Management and Budget, the Secretary of the Department of Human Resources, the Insurance Commissioner, the Chief Justice of the Supreme Court, the State Treasurer, the Controller General, the Secretary of the Department of Health and Social Services, the Lieutenant Governor, and the Executive Director of the Delaware State Education Association or their designees. The Statewide Benefits Office (SBO) is a division within the DHR that functions as the administrative arm of the SEBC responsible for the administration of all statewide benefit programs with the exception of pension and deferred compensation benefits. These programs include, but are not limited to, health, prescription drug, dental, vision, disability, life, flexible spending accounts, wellness and disease management programs, pre-tax commuter benefits, third-party network of surgeons of excellence and supplemental critical illness and accident benefits. Not all members of the GHIP are eligible for participation in all of the benefit programs.

The SBO administers the Group Health Insurance Program (GHIP). Eligible participants include active, retired, school district, charter school, university, community college, non-state groups, and COBRA participants and their enrolled dependents. By statute, employee unions cannot negotiate for benefits, therefore there are no union-specific, alternative plan designs for the PPO, HMO, CDH Gold or First State Basic medical plans or the prescription benefit plan. Plan participants are primarily located within the State of Delaware, although a small number of participants reside in other states and countries. There are multiple employer units and non-payroll groups located in three counties throughout the State, with each exercising a high degree of independence. The plan year for the GHIP begins on July 1 and coincides with the State's fiscal year.

Today, the State has contracted with the Highmark Delaware and Aetna to administer the medical portion of the GHIP and with ESI to administer prescription drug services. The State will be marketing the medical plan (excluding pharmacy) during the spring of calendar year 2021;

² IMPORTANT: Your bid will not be accepted if the State of Delaware does not receive an email confirmation of an Intent to Bid. See Section II.B.1 for details.

³ IMPORTANT: Your bid will not be accepted if your organization does not participate in the Mandatory Pre-Bid Meeting (Conference Call). See Section II.B.4 for details.

similarly, the prescription drug plan will be marketed during the summer of calendar year 2020. The State reserves the right to change its medical TPAs and/or PBM at any point during the term of its contract with the firm selected to administer contract compliance reviews, and the terms of the award for contract compliance review services would apply to both current and future TPAs and PBMs supporting the GHIP.

The chart below provides the average number of plan participants (“members”) in each of the State’s plans for Fiscal Year 2019 (July 1, 2018 – June 30, 2019). All plans include prescription drug coverage.

Highmark Delaware	Total Paid Claims	Average Members
First State Basic Active	\$15,371,000	4,805
First State Basic Non-Medicare Retirees	\$2,633,000	355
PPO Active	\$311,265,000	57,419
PPO Non-Medicare Retirees	\$55,559,000	6,087
Medicfill (Medicare Primary) Retirees	\$52,986,000	26,708
Grand Total Highmark Delaware	\$437,814,000	95,374
Aetna	Total Paid Claims	Average Members
HMO Active	\$91,583,000	22,136
HMO Non-Medicare Retirees	\$27,684,000	3,543
CDH Gold Active	\$17,774,000	4,911
CDH Gold Non-Medicare Retirees	\$3,180,000	300
Grand Total Aetna	\$140,221,000	30,891
Express Scripts	Total Paid Claims	Average Members
Highmark Delaware Participants	\$149,587,000	95,544
Aetna Participants	\$28,510,000	30,891
Grand Total Express Scripts	\$178,097,000	126,435

The State has previously contracted with an independent organization to obtain contract compliance review services for the medical and prescription drug plans, and paid the following fees for audits of 24 months of claim data conducted during each of the plan years noted:

	FY17	FY19 and FY20	Total Fees
Express Scripts	\$113,000	\$116,390	\$229,390
Highmark Delaware	\$41,800	\$43,054	\$84,854
Aetna	\$41,000	\$42,230	\$83,230
Total	\$195,800	\$201,674	\$397,474

B. Proposal Objectives

The SEBC desires to contract with an independent organization(s) specializing in providing contract compliance review services for medical and/or prescription drug plans for clients of similar size. The organization must have prior experience directly related to the services requested in this RFP and must be able to demonstrate clearly their ability to perform the required the scope of services within the timeline requested. Consulting (Willis Towers Watson) and analytic firms (IBM Watson Health) that currently provide services to the State of Delaware GHIP are not eligible to bid.

C. Scope of Services

You may submit a proposal for Medical Contract Compliance Review Services and/or Prescription Drug Contract Compliance Review Services. The selected organization(s) is required to provide the following services:

Medical Contract Compliance Review Services

The Contractor shall provide contract compliance review services for two one-year periods:

- 1) July 1, 2018 – June 30, 2019 (FY19)
- 2) July 1, 2019 – June 30, 2020 (FY20)

The State may require the Contractor to provide contract compliance review services for a third, one-year period (July 1, 2020 – June 30, 2021 [FY21]) during the initial contract term.

The Contractor shall conduct contract compliance reviews of medical claims processed by the Plan's medical TPAs in accordance with the provisions and requirements under this RFP. The reviews shall include the following:

- ❖ **Operational Review** to explore the day-to-day administrative policies, procedures, and internal quality control measures critical to minimizing financial loss and maintaining participant satisfaction levels. Review of the vendor's SOC-1 report is to be supplemented with a questionnaire specific to administration of the State's Plan. Topics include, but are not limited to:
 - Divisions of staff and administrative functions assigned to the State Plan, with identification of any outsourced services;
 - Eligibility receipt, timely update, reconciliation procedures, and system interfaces;
 - Detection of other coverages (i.e., coordination with group and Medicare benefits, workers' compensation, third party liability);
 - System edits for detection of coding errors (i.e., unbundled or upcoded medical services, inconsistent drug codes) and alerts for claims requiring manual review and processing;
 - Procedures employed to identify potential fraud and abuse (i.e., over utilization of physical therapy, over utilization of certain medical procedures/surgeries, etc.);

- Coordination with departments related to claim administration (i.e., medical review, preauthorization, case management); and
 - Maintenance of provider files and fee schedules with distinction between contracted and non-network providers for medical claims, and application of appropriate generic vs. brand and formulary vs. non-formulary drugs.
- ❖ **Financial Comparison** of amount paid on the data file to amounts invoiced and paid by the State.
- ❖ **Electronic Review of All Claims (100%)** processed within the contract compliance review period should explore system capabilities and the accuracy of plan set-up. Queries should include, but may not be limited to:
- Potential duplication of payments;
 - Member eligibility (based on vendor's data file layouts);
 - Reimbursement of expenses excluded or limited by plan design;
 - Appropriate patient cost-shares (i.e., copayment, deductible, coinsurance);
 - Consistency in coordination of benefits, including subrogation and workers' compensation; and
 - Special programs such as limits and coinsurances on In-Vitro Fertilization.
- ❖ A **Target Claims Selection** (sample size for each vendor) is expected to validate the electronic query results.
- ❖ **Claim Sample** – Your proposal should clearly indicate the onsite claim review process. For example, is each sample reviewed for a single attribute or entirely from receipt through each step of processing for the following:
- Provider submissions included necessary documentation to support the claim;
 - Claims were paid in strict accordance with Plan provisions;
 - Established administrative procedures were followed and within industry guidelines;
 - Claims were paid only for eligible individuals;
 - Claims that required reviews, including pre-certification and utilization review for example, received appropriate evaluation;
 - Third party recovery procedures, including coordination of benefits with Medicare and other group plans, were followed in accordance with plan provisions and standard insurance industry protocols;
 - Amounts paid were within contracted or non-contracted allowances;
 - Benefits were paid under the proper benefit classification, diagnostic, and procedure codes;
 - Benefit limitations, deductibles, copays, coinsurance, and out-of-pocket maximums were properly applied;
 - Requests for additional information were appropriate and did not result in unnecessary processing delays;

- Arithmetic calculations were correct and payments were made to the proper party; and
- Duplicate claims have been properly denied.
- ❖ **Written Report of Findings** presented in draft form to the respective administrator for review and comment. Their responses are to be incorporated into the final draft provided for the State's review. This written evaluation will include:
 - Objectives of the contract compliance review;
 - Procedures taken to complete the contract compliance review;
 - Number of claims examined and total paid amount of the claims;
 - Number and dollar value of claims with financial errors and procedural errors expressed as a percentage of the total claims reviewed;
 - Comparison of contract compliance review results to performance guarantees and industry standards;
 - A description of the error categories found during the review with attention to systemic or human cause and required corrective measures;
 - Recommendations to improve overall administration and/or claims processing accuracy;
 - Evaluation of the vendor's policies and administration for managing claims costs to ensure that procedures support maximized savings;
 - Identify error patterns or trends, identify causes, assess effects, and provide recommendations for corrections;
 - Provide a table of payment errors with a clear description of the sampled error and/or other errors detected through review of the patient's history; the report should clearly identify those errors that were subject to internal review but bypassed detection;
 - Include an action plan for overpayment recovery; and
 - Summary comments and recommendations for each plan regarding improving plan design to ensure that the State receives high quality services in a cost effective, timely manner.

Prescription Drug Contract Compliance Review Services

The Contractor shall provide contract compliance review service, with two aspects, for four one-year periods as follows:

1. Commercial Plan (Active employees and retirees not eligible for Medicare)
 - a. July 1, 2018 – June 30, 2019 (FY19)
 - b. July 1, 2019 – June 30, 2020 (FY20)
2. Employer Group Waiver Program (Retirees eligible for Medicare)
 - a. January 1, 2018 – December 31, 2018 (Plan Year 2018)
 - b. January 1, 2019 – December 31, 2019 (Plan Year 2019)

The State may require the Contractor to provide contract compliance review services for two additional one-year periods during the initial contract term:

1. Commercial Plan: July 1, 2020 – June 30, 2021 (FY21)
2. Employer Group Waiver Program: January 1, 2020 – December 31, 2020 (Plan Year 2020)

The Contractor shall conduct contract compliance reviews of pharmacy claims processed by the Plan's PBM in accordance with the provisions and requirements under this RFP. While the State's current contract with the Plan's PBM is reflective of a traditional pricing arrangement with 100% pass-through of rebates, the State reserves the right to change the basis of its PBM contract (e.g., move from a traditional to a transparent arrangement requiring 100% pass-through of all retail network discounts and dispensing fees) at any point during the term of its contract with the Contractor. In the event such a change takes place, the State's expectation is that the Contractor's scope of services may be updated to reflect any services typically associated with contract compliance reviews of other types of PBM pricing arrangements that would not otherwise be covered in the current scope of services.

The contract compliance reviews shall include the following for the State's current PBM pricing arrangement:

- ❖ **Operational Review** to explore the day-to-day administrative policies, procedures, and internal quality control measures critical to minimizing financial loss and maintaining participant satisfaction levels. Review of the vendor's SOC-1 report is to be supplemented with a questionnaire specific to administration of the State's Plan. Topics include, but are not limited to:
 - Divisions of staff and administrative functions assigned to the State Plan, with identification of any outsourced services;
 - Eligibility receipt, timely update, reconciliation procedures, and system interfaces;
 - Detection of other coverages (i.e., coordination with group and Medicare benefits, workers' compensation, third party liability);
 - System edits for detection of coding errors (i.e., unbundled or upcoded medical services, inconsistent drug codes) and alerts for claims requiring manual review and processing;
 - Procedures employed to identify potential fraud and abuse (i.e., prescription refills filled too soon, higher than expected utilization/cost of compounds medication, etc.);
 - Coordination with departments related to claim administration (i.e., medical review, preauthorization, case management);
 - Maintenance of provider files and fee schedules with distinction between contracted and non-network providers for medical claims, and application of appropriate generic vs. brand and formulary vs. non-formulary drugs; and
 - Special programs such as In-Vitro Fertilization limits and coinsurance and diabetic programs.

- ❖ **Financial Comparison** of amount paid on the data file to amounts invoiced and paid by the State.
- ❖ **Electronic Contract Compliance Review of all Prescription Transactions (100%)** (including specialty drugs) is expected to include the following review components.
 - Independent verification of average wholesale price (AWP);
 - Comparison of actual aggregate claim discounts, dispensing fees, and rebates to contractual guarantees;
 - Comparison of actual claim adjudication to plan design and benefit rules;
 - Member cost share;
 - Member eligibility (based on vendor's data file layout);
 - Duplicate claims;
 - Coverage rules; and
 - Identification of contractual term improvement opportunities.
- ❖ **Rebate Review** should include all payments from manufacturers or other third parties to the PBM as they relate to the State's plan. The manufacturer payment and rebate comparison should include a comprehensive review that includes:
 - Identification of all rebate eligible claims and identification of categories properly excluded from rebates, according to the PBM contract;
 - Verification of earned rebates by quarter by National Drug Code (NDC);
 - Comparison of earned rebates file to manufacturer rebate submission file;
 - Onsite review of applicable manufacturer contracts to verify all rebate amounts due are properly paid to the State; and
 - Comparison of PBM receipts from manufacturers to earned rebate file.
- ❖ **MAC List Review** of the top fifty (50) drugs utilized (number dispensed during the review period) by the Plan to determine if MAC pricing is optimal for generic prescription drugs.
- ❖ **Written Report of Findings** presented in draft form to the respective administrator for review and comment; their responses are to be incorporated into the final draft provided for the State's review. This written evaluation will include:
 - Objectives of the contract compliance review;
 - Procedures taken to complete the review;
 - Number of claims examined and total paid amount of the claims;
 - Number and dollar value of claims with financial errors and procedural errors expressed as a percentage of the total claims reviewed;
 - Comparison of results to performance guarantees and industry standards;
 - A description of the error categories found during the review with attention to systemic or human cause and required corrective measures;

- Recommendations to improve overall administration and/or claims processing accuracy;
- Identification of contractual term improvement opportunities; and
- Summary comments and recommendations for each plan regarding improving plan design to ensure that the State receives high quality services in a cost effective, timely manner.

D. Timetable/Deadlines

The following timetable is expected to apply during this RFP process:

Event	Target
RFP Released	Monday, 03/02/2020
Intent to Bid Deadline ⁴ – 1:00 PM EST (local time)	Friday, 03/06/2020
Mandatory Pre-Bid Meeting (Conference Call) ⁵ – 11:00 AM EST (local time)	Tuesday, 03/10/2020
Follow-up Questions due to SBO from Confirmed Bidders – 1:00 PM EST (local time)	Friday, 03/13/2020
Responses to Questions to Confirmed Vendors	Friday, 03/20/2020
Deadline for Bids – 1:00 PM EST (local time)	Friday, 03/27/2020
Notification of Finalists - Invitation to Interview	June, 2020
Finalist Interviews ⁶	Mid-July, 2020
Contract Award	August or September, 2020
Implementation	October and Nov, 2020
Contract Effective Date	10/01/2020 or later

⁴ **IMPORTANT:** Your bid will not be accepted if the State of Delaware does not receive an email confirmation of an Intent to Bid. See Section II.B.1 for details.

⁵ **IMPORTANT:** Your bid will not be accepted if your organization does not participate in the Mandatory Pre-Bid Meeting (Conference Call). See Section II.B.4 for details.

⁶ The SEBC will require each of the finalists to make a presentation in Dover, Delaware, at the expense of the proposing firm. Please save the date of July 20, 2020, though the SBO cannot guarantee that date for interviews.

E. Evaluation Process

1.0 Proposal Review Committee

The Proposal Review Committee (PRC) will review all proposals submitted that meet the requirements of the RFP. The PRC shall be comprised of representatives from each of the following offices:

- Department of Human Resources
- Office of Management and Budget
- Controller General's Office
- Department of Health and Social Services
- State Insurance Commissioner's Office
- State Treasurer's Office
- Chief Justice of the Supreme Court
- Lieutenant Governor's Office
- Executive Director of the Delaware State Education Association

The SBO shall determine the firms that meet requirements pursuant to selection criteria of the RFP and procedures established in 29 Del. C. § 6981 and 6982. The PRC reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information the PRC may deem necessary to make a decision. The PRC shall interview at least one (1) of the qualified firms.

The minimum requirements are mandatory. Failure to meet any of the minimum requirements in the RFP may result in disqualification of the proposal submitted by your organization.

The SEBC will not respond to a question in the question and answer process that asks whether or not a bid would be disqualified if the vendor does not meet a specific minimum requirement. The bid must be submitted and then analyzed in its entirety.

The PRC shall make a recommendation regarding the award of contract to the SEBC who shall have final authority, in accordance with the provisions of this RFP and 29 Del.C. §6982, to award a contract to the winning firm or firms as determined by the SEBC in its sole discretion to be in the best interests of the State of Delaware. The SEBC may negotiate with one or more firms during the same period and may, at its discretion, terminate negotiations with any or all firms. The SEBC reserves the right to reject any and all proposals. Pursuant to 29 Del. C. § 6986, the SEBC may award a contract to two or more vendors if the SEBC determines that it is in the best interest of the State. However, it is the intention of the SEBC to award one contract. The SEBC also reserves the right to award to two vendors - one for the medical contract compliance review and another for the prescription contract review.

Evaluation Criteria

All proposals shall be evaluated using the same criteria and scoring process. Because a vendor may submit a proposal for either or both programs, each program's proposals will be evaluated and scored separately. The following criteria shall be used by the PRC to evaluate proposals:

Topic and Weighting	Description/Examples
Contract Compliance Review Plan – 30%	The bidder's contract compliance review plan will be evaluated in accordance with the goals and objectives specified in the RFP and the bidder's responses to the questionnaire. Aspects of this evaluation will include the bidder's plan for managing the timelines associated with the requested scope of services, as well as the proposed approach to reporting audit results to the SBO and/or SEBC.
Expertise and Experience – 35%	The depth of experience conducting operational reviews of BCBS and/or Highmark Delaware, Aetna, and ESI will be considered.
Responsiveness – 5%	Compliance with the submission requirements of the bid including format, clarity, conformity, realistic responses, and completeness, as well as responsiveness to requests during the evaluation process.
Cost – 30%	Reasonable rates compared to other competitive proposals for the required services. Best and final rates may not be requested after your bid submission. Please provide your best and final rates with your initial proposal. At the State's sole discretion, the SEBC may review and compare a fixed rate offering to any other fee offering included within a bidder's response. The State will also consider an offer if the vendor is proposing discounted pricing for the award of both programs. Final selection of the pricing to be negotiated and accepted will be subject to the best interest of the State.

It is the proposing firm's sole responsibility to submit information relative to the evaluation of its proposal and the SEBC is under no obligation to solicit such information if it is not included with the proposing firm's proposal. Failure of the proposing firm to submit such information in a manner so that it is easily located and understood may have an adverse impact on the evaluation of the proposing firm's proposal.

The SEBC will use the information contained in each bidder's proposal to determine whether that bidder will be selected as a finalist and for contract preparation. The proposal the SEBC selects will be a binding document. As such, the SEBC will expect the proposing firm to honor all representations made in its proposal.

The proposals shall contain the essential information for which the award will be made. The information that is required in response to this RFP has been determined by the SEBC and the PRC to be essential in the evaluation and award process. Therefore, all instructions contained in this RFP must be met in order to qualify as a responsive contractor and to participate in the PRC's consideration for award. Proposals that do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the PRC.

3.0 RFP Award Notification

The contract shall be awarded to the vendor whose proposal is determined by the SEBC to be most advantageous, taking into consideration the evaluation criteria set forth in the RFP. The SEBC is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score. Rather the contract will be awarded to the vendor whose proposal is determined by the SEBC to be the most advantageous. The award is subject to the appropriate State of Delaware approvals. After a final selection is made, the winning vendor will be invited to enter into a contract with the State; remaining vendors will be notified in writing of their selection status.

4.0 Award of Contract

The final award of a contract is subject to approval by the SEBC. The SEBC has the sole right to select the winning vendor 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. Notice in writing to a vendor of the acceptance of its proposal by the SEBC and the subsequent full execution of a written contract will constitute a contract and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

F. Confidentiality of Documents

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. (“FOIA”). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. The content of all proposals is subject to FOIA's public disclosure obligations. However, there shall be no disclosure of any vendor's information to a competing vendor or in fulfillment of a FOIA request during the bidding and contract development process.

Organizations are advised that when the contract has been fully executed the contents of the proposal and terms of the contract, including administrative fees, will become public record and nothing contained in the proposal or contract will be deemed to be confidential except the proprietary information. If your bid contains the phrase “confidential and proprietary” or simply the word “confidential” on each page, such status will not automatically be granted.

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

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information. Fees or premiums are only considered confidential and proprietary during the bid evaluation process.

IMPORTANT - Administrative fees are not confidential and proprietary information and the monthly spend will be posted on the contract award page of www.bids.delaware.gov per the Vendor Usage reporting requirement. (See section Required Reporting of Fees and 2nd Tier Spend)

The confidential business information must be submitted as one electronic pdf copy as follows:

- 1) A letter from the Vendor's legal counsel describing the information in the attached document(s) and representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002. The letter must briefly state the reason(s) that the information meets the said definitions. (See Section II.C., Submission of Proposal, for detailed instructions.)
- 2) Copies of the non-redacted pages with that information must be in the same pdf behind the letter.

A vendor's determination as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

II. Terms and Conditions

A. Proposal Response Requirements

1. **Conformity** – Your proposal must conform to the requirements set forth in this RFP. The SEBC reserves the right to deny any and all exceptions taken to the RFP requirements. By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules, appendices, and exhibits hereto, and has fully informed itself as to all existing conditions and limitations. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.
2. **Concise and Direct** – Please provide complete answers and explain all issues in a concise, direct manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. Please do not refer to another answer if the question appears duplicative, but respond in full to each question. If you cannot provide a direct response for some reason (e.g., your company does not collect or furnish certain information), please indicate the reason rather than providing general information that fails to answer the question. **“Will discuss” and “will consider” are not appropriate answers, nor is a reference to the current contractual terms by an incumbent.** All information requested is considered important. If you have additional information you would like to provide, include it as an exhibit to your proposal. If your organization is an incumbent, please reply with a full explanation to every question since the review committee may not be familiar with the current contract or your services.
3. **Realistic** – It is the expectation of the SEBC that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within their proposal. Proposals must be realistic and must represent the best estimate of time, materials, and other costs including the impact of inflation and any economic or other factors that are reasonably predictable. The State of Delaware shall bear no responsibility or increased obligation for a vendor’s failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.
4. **Completeness of Proposal** – The proposal must be complete and comply with all aspects of the specifications. Any missing information could disqualify your proposal. Proposals must contain sufficient information to be evaluated and, therefore, must be complete and responsive. Unless noted to the contrary, we will assume that your proposal conforms to our specifications in every way. The SEBC reserves full discretion to determine the competence and responsibility, professionally, and/or financially, of vendors. Failure to respond to any request for information may result in rejection of the proposal at the sole discretion of the SEBC.

5. **Fee Proposal** (see Appendix A)

Per the instructions on Appendix A, cost proposals are required on a fixed fee basis. At its sole discretion, and as it serves the best interest of the State, the State reserves the right to negotiate for an award against any pricing basis if two or more separate fee offerings are proposed by the same vendor.

B. General Terms and Conditions

1. **Intent to Bid** – **!!!IMPORTANT!!!**

- a. You must indicate your Intent to Bid via email to Ms. Laurene Eheman at laurene.eheman@delaware.gov by Friday, March 6, 2020, no later than 1:00 p.m. ET (local time).
- b. Your bid will not be accepted if the State of Delaware does not receive an email or written confirmation of an Intent to Bid. Include the following information: company name, mailing and physical address, and the name, title, and email address of the primary contact along with the same information for a secondary contact.
- c. Upon receipt, a Word version of this document will be provided.

2. **No Bid** – To assist us in obtaining competitive bids and analyzing our procurement processes, if you choose not to bid we ask that you let us know the reason. We would appreciate your candor. For example: objections to (specific) terms, do not feel you can be competitive, or cannot provide all the services in the Scope of Services. Please email Ms. Laurene Eheman at laurene.eheman@delaware.gov.

3. **Definitions** –

- a. The following terms are used interchangeably throughout this RFP:
 - i. bidder, vendor, contractor, organization, service provider
 - ii. member (of the GHIP), participant (specifically enrolled or participating)
 - iii. SEBC, State of Delaware
 - iv. proposal, bid, vendor's submission
 - v. non-payroll group, participating group
 - vi. shall, will, and/or must
 - vii. Scope of Services, Scope of Work
 - viii. fees, rates

- ix. rates, premiums
 - b. Customer Service – Services to the members/participants, not the State, SEBC or SBO personnel.
 - c. Account Management – Services provided to your client - the State, SEBC and SBO personnel.
 - d. Appendix – Form provided in the RFP that needs to be completed by the bidder.
 - e. Attachment – Informational document provided in the RFP.
 - f. Exhibit – Attachment requested to the vendor’s bid response. Examples would be a copy of the bidder’s business license, a resume, or sample mailings.
4. **Mandatory Pre-Bid Meeting – A conference call will take place on Tuesday, March 10, 2020, at 11:00 a.m. ET (local time).** The purpose is to discuss the bid submission requirements, requirements for a claim of confidential and proprietary information, along with the formatting of hard copies and electronic copies. We will also discuss the technology requirements and the SEBC’s expectation for the proposing firm to honor all representations made in its proposal. If additional topics will be discussed and/or additional personnel are required to attend, vendors that submitted an Intent to Bid will be notified.

The following participants are required to attend:

- Your organization’s primary contact for the RFP or their designee, and
- The administrative person who will be compiling the hard and electronic copies and confidential and proprietary request, if applicable, the redacted copies.

Your bid will not be accepted if your organization does not participate in the conference call. Meeting minutes may be taken. If new or additional information is provided, an addendum may be released to address information provided during the mandatory pre-bid conference call. Questions regarding other topics will not be entertained and must be submitted in the Questions and Answers process as described in Section II.B.6.

5. **Discrepancies, Revisions and Omissions in the RFP** – The vendor is fully responsible for the completeness and accuracy of their proposal and for examining this RFP and all addenda. Failure to do so is at the sole risk of the vendor. **Should the vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or terms not appropriate to the services requested in the Scope of Services or Minimum Requirements**⁷ the vendor shall notify the contact for this RFP, Ms. Laurene Eheman, electronically, and only electronically, laurene.eheman@delaware.gov, at least ten (10)

⁷ An example would be if a minimum requirement asked for a service that is outside of generally accepted industry standards for claim audit services, such as auditing the electronic medical records of a large local medical provider.

business days before the proposal due date, therefore, no later than 4:30 p.m., Friday, March 13, 2020, by submitting the *RFP Terms and Conditions Exception Tracking*, Appendix D. This will allow for the issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of the vendor's proposal upon which an award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of Ms. Laurene Eheman, electronically, and only electronically, at laurene.eheman@delaware.gov, no later than ten (10) business days prior to the time set for opening of the proposals, Friday, March 13, 2020, at 1:00 p.m. ET (Local Time),

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at www.bids.delaware.gov and emailed to all vendors that submitted an Intent to Bid. The State of Delaware or SEBC is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

6. **Questions** – The SEBC anticipates this will be an interactive process and will make every reasonable effort to provide sufficient information for vendor responses. Vendors are invited to ask questions during the proposal process and to seek additional information, if needed. However, do not contact any member of the SEBC about this RFP. Communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor.

Vendors should only rely on written statements issued by the RFP designated contact, Ms. Laurene Eheman. **All proposing vendors must submit their questions electronically, and only electronically, to Ms. Laurene Eheman at laurene.eheman@delaware.gov no later than Friday, March 13, 2020, by 1:00 p.m. ET (local time).**

Required Format: Questions must be submitted in a Word document with a table format. So that we can be sure to respond within the context of the question, if you are referring to a specific question or term, please copy the question or information and reference the section, question number, and/or page number in the first column. In the second column, copy the requirement or question. In the third column, state your question. The SBO will then put all questions received and the responses into one document and send it to all vendors who confirmed their intention to bid. It will also be posted on www.bids.delaware.gov.

7. **Consistency of Bid Response with Finalist Interview** – A summary of each vendor finalist's bid response will be provided to the PRC in advance of the finalist interviews. In the event that you are selected as a finalist, it is imperative that you notify the State of any material differences between your bid response and your finalist presentation no later than five (5) business days before the finalist meeting to ensure adequate time to notify the PRC of those changes.

8. **Best and Final Rates or Offer (“BAFO”)** – The State may or may not request improved rates before the determination of finalists. Therefore, you are encouraged to submit your best pricing initially in your bid response. A BAFO may be requested of finalists.

Contract Term / Rate Guarantee Periods

The term of the contract will be for three (3) years beginning October 1, 2020 (or later) and ending June 30, 2023, with the first year running from the contract effective date through June 30, 2021. The State will have the option to renew the contract for two (2) additional one-year periods. The vendor must guarantee financial terms for five (5) years, through June 30, 2025, i.e., guarantee administrative fees for the 3-year term of the contract and, for the two optional one-year renewal periods, guarantee a “not to exceed” cap on administrative fees each year.

Contract Termination

The term of the contract between the winning organization and the State will be for three (3) years and may be renewed for two (2) additional one (1) year extensions at the discretion of the SEBC. The contract may be terminated for convenience by the winning firm with 180 days written notice to the State. The contract may be terminated for cause by the vendor with 180 days written notice to the State. In the event the winning firm materially breaches any obligation under this Agreement, the State may terminate this Agreement upon thirty (30) days written notice.

Performance Guarantees

The State expects exceptional client account management and participant customer service from their vendors and is interested in evaluating financial and non-financial performance guarantees. The State reserves the right to negotiate both financial and non-financial performance guarantees. *If your offer does not receive a clarifying question or any other response from the State, it does not infer acceptance.* Please refer to Appendix H.

Future Contract Development

It is imperative that the contract drafting and finalization process be timely and accurately reflect the minimum requirements and other applicable contractual terms in the RFP. A fee will be at risk as set forth in the Performance Guarantees if this requirement is not met. Appendix K is a template contract with the terms applicable to the services in this engagement. **Therefore, each term should be reviewed by an attorney for a response in a redline format for any suggested changes.** The State cannot “pre-negotiate” a contract with each bidder, therefore if there are suggested changes and the State does not respond that does not infer acceptance by the State.

Use of Subcontractors

Subcontractors are subject to all the terms and conditions of the RFP and the companies and their services must be clearly explained in your proposal. A subcontractor is any company that is under direct contract to perform services for the State’s account. Consequently, an example

of a business that would provide services on the State's account, but is not a subcontractor, is the United States Postal Service. The SEBC reserves the right to approve any and all subcontractors.

Required Reporting of Fees and 2nd Tier Spend

Monthly Vendor Usage Report - One of the State's primary goals in administering all its contracts is to keep accurate records regarding actual value/usage. This information is essential in order to update the contents of a contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around the State's ability to convey accurate and realistic information to all interested parties. For benefit programs, only administrative fees that can be identified as separate from any bundled pricing and are not employee-pay-all are reported.

A complete and accurate Usage Report shall be furnished in an Excel format and submitted electronically to the State's central procurement office at the end of each fiscal year stating the monthly administrative fees on this contract. It will be posted on the contract award page of the www.bids.delaware.gov website and therefore administrative fees are not considered confidential and proprietary. *The SBO will submit this report on your behalf.*

2nd Tier Spending Report - In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by subcontractors who are Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to: name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov).

Accurate 2nd Tier Reports shall be submitted to the Office of Supplier Diversity on the 15th (or next business day) of the month following each quarterly period. For consistency, quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date. *You will be asked for this information and the SBO will submit this report on your behalf.* For benefit programs, only 2nd Tier Spend fees that can be identified as separate from any bundled pricing and are not employee-pay-all are reported.

Offshore Vendor Activity

An activity central to the Scope of Services cannot take place at a physical location outside of the United States. Only support activities, including those by a subcontractor, may be performed at satellite facilities such as a foreign office or division. Failure to adhere to this requirement is cause for elimination from future consideration.

Rights of the PRC

- The PRC reserves the right to:
 - Select for contract or negotiations a proposal other than that with lowest costs.
 - Reject any and all proposals received in response to this RFP.
 - Make no award or issue a new RFP.
 - Waive or modify any information, irregularity, or inconsistency in a proposal received.
 - Request modification to proposals from any or all vendors during the review and negotiation.
 - Negotiate any aspect of the proposals with any organization.
 - Negotiate with more than one organization at the same time.
 - Pursuant to 29 Del. C. § 6986, select more than one contractor/vendor to perform the applicable services.
- Right of Negotiation – Discussions and negotiations regarding price, performance guarantees, and other matters may be conducted with organizations(s) who submit proposals determined to be reasonably acceptable of being selected for award, but proposals may be accepted without such discussions. The PRC reserves the right to further clarify and/or negotiate with the proposing organizations following completion of the evaluation of proposals but prior to contract execution, if deemed necessary by the PRC and/or the SEBC. *If any portion of a bid response does not receive a clarifying question or any other response from the State, the non-response does not infer acceptance of that portion of the bid response by the State.* The SEBC also reserves the right to move to other proposing firms if negotiations do not lead to a final contract with the initially selected proposing firm. The PRC and/or the SEBC reserves the right to further clarify and/or negotiate with the proposing firm(s) on any matter submitted.
- Right to Consider Historical Information – The PRC and/or the SEBC reserves the right to consider historical information regarding the proposing firm, whether gained from the proposing firm’s proposal, question and answer conferences, references, or any other source during the evaluation process.
- Right to Reject, Cancel and/or Re-Bid – The PRC and/or the SEBC specifically reserve the right to reject any or all proposals received in response to the RFP, cancel the RFP in its entirety, or re-bid the services requested. The State makes no commitments, expressed or implied, that this process will result in a business transaction with any vendor.

C. Submission of Proposal

1. General Directions for Hard Copies –

- i. For each section, such as the minimum requirements and questionnaire, and for each attachment/exhibit you reference, separate the materials with tabs. Please include a table of contents.

- ii. Please use double-sided copies where it is logical to do so; for example, a section of ten or more pages.
- iii. Please use locking binders so the rings don't separate in shipping. Do not use spiral binding because we have to add hard copies of the responses to follow-up questions to your bid response binder.
- iv. Please use multiple smaller binders instead of one large binder (6# for example). A very large and heavy binder is hard to manage. A suggestion might be to have the appendices and exhibits in their own binder.
- v. For reports or documents of fifty or more pages, do not include a hard copy. Use a sheet that references the electronic version of the document.
- vi. Please submit **one (1) complete hard copy** of your proposal. *Complete* means that it includes all information you may deem proprietary and confidential. In other words, the information deemed proprietary and confidential must not be redacted because then we cannot read it. Send to the following address:

Ms. Laurene Eheman, RFP and Contract Manager
 State of Delaware, Statewide Benefits Office
 97 Commerce Way, Suite 201
 Dover, DE 19904
 Phone: (302) 739-8331

2. **General Directions for Electronic Copies** –

- a. Include a *complete* non-redacted electronic copy of your proposal in a PDF format on its own CD or flash drive. You must scan all the documents; for example, a signed cover letter, the signed Officer's Statement and any exhibits.
- b. You must divide your bid into PDFs of manageable sections for easier readability. We will not accept a bid with one PDF of the entire bid response!
- c. The file names of the documents must be short. Include a short version of your company name but do not include, the reference number of this RFP, the words "State of Delaware" or "Delaware". Simply use a title of the document; for example, "ABC Co - Minimum Requirements", "L&C - Appendix A – Performance Guarantees", or "John's Mgt Co - Exhibit 1 – John Doe's Resume".
- d. The following documents are to ALSO be included in Word:
 - 1. Minimum Requirements
 - 2. Questionnaire
 - 3. Appendix A, *Fee Proposal*

4. Appendix K, *Professional Services Agreement*

- e. Please label the CD or flash drive with your company name and carefully package it for shipping.

3. **Confidential Information, Generally** –

Confidential and proprietary information identified in the attorney’s letter and redacted from the vendor’s proposal will be treated as confidential during the evaluation process.

4. **Directions for Confidential and Proprietary Submission, if any** –

In order to preserve the confidential and proprietary status of the appropriately designated portion of your bid, your bid must be submitted as follows: Submit one (1) electronic pdf copy that contains a letter from the Vendor’s legal counsel describing the information in the attached documents (pages from the bid response) and representing in good faith that the information in each document is not “public record” as defined by 29 Del. C. § 10002. The letter must briefly state the reason(s) that the information meets the said definitions. The single pdf would have the signed letter and each page of the bid response with that information behind it in the order stated in the letter so that the State can identify the information without having to look through the entire bid response. For large sections or appendices, please submit a sheet that identifies the material, not the multitude of pages. For example, “Appendix C – *GeoAccess Report*”.

5. **Directions for the Redacted Electronic Copy⁸, if applicable** –

- a. Any information you deem confidential and proprietary as identified in the attorney’s letter must be redacted. The State is not responsible for incorrect redactions or reviewing your submission to determine whether or not the information asserted as confidential and proprietary is redacted. Mistakes in redactions are the sole responsibility of the bidder.
- b. Redaction Method - You must use a software program that has a redaction feature, such as Adobe. If you simply use a black highlight, the text can still be seen on a hard copy and it can be reversed in a Word version.
- c. PDF - A *complete* electronic copy is needed with the redacted materials in a PDF format. We need this separate complete electronic copy to use for FOIA requests. You must scan all the documents as directed above in the *General Directions for Electronic Copies* above. For large sections or appendices, please submit a sheet that identifies the material, not pages of black redactions. For example, “Appendix C – *Disaster Recovery Plan* – is confidential and proprietary and is not public record as defined by FOIA at 29 Del. C. § 10002(d)”.

⁸ A redacted hard copy is not required.

6. Questions and Summary –

The person who is putting together the hard and electronic copies is welcome to, and encouraged to, contact Ms. Laurene Eheman directly by phone at 302-760-7060 to discuss the requirements and ask questions.

Summary	Hard Copies	Electronic Copies on one CD or Flash Drive
Confidential and Proprietary Information, <u>if any</u> : The attorney’s cover letter along with one set of <u>only</u> the non-redacted pages that match the information listed in the attorney’s cover letter - not the complete bid.	0	Scanned as one PDF document
Complete bid <u>with</u> redacted sections	0	Only PDF versions with “redacted” in the file name and in one electronic folder
Complete bid <u>without</u> redacted sections	1	PDFs of the entire bid and Word and Excel versions of the sections and appendices as listed in Section 2.d above.

7. Follow-Up Responses and Finalist Presentations

- a. The same format requirements apply to follow-up responses and presentation materials. **If information in any of the follow-ups and presentation matches the type that was requested for a confidential and proprietary determination, you must submit a redacted electronic version of the document(s).**
- b. Follow-Ups – Via email, you will be asked for a non-redacted electronic response. SBO will print the required number of hard copies for you (unless they are voluminous and in that event the email will contain a request for the hard copies).
- c. Finalist Presentation – You will be asked for a non-redacted electronic copy that includes PDFs of any supplemental materials or handouts.
- d. If there is a new type of information that was not included in your original bid and you deem it confidential and proprietary, you must include the required attorney’s letter.

8. Proposal Submission Date – Both hard and electronic copies of your complete proposal must be received at the above address no later than **1:00 p.m. ET (local time) on Friday, March 27, 2020.** Electronic copies cannot be transmitted via email by the deadline with hard copies to arrive before, on, or after the due date. If the office is

closed on the bid due date due to weather or other emergency, the due date and time cannot be pushed forward one day. Any proposal received after this date and time shall not be considered and will be returned to the proposing firm unopened. The proposing firm bears the risk of delays in delivery.

9. **Proposal Opening** – To document compliance with the deadline, the proposals will be date and time stamped upon receipt. Proposals will be opened only in the presence of State of Delaware personnel. There will be no public opening of proposals, but a public log will be kept of the names of all vendor organizations that submitted proposals. The list will be posted on www.bids.delaware.gov. Proposals become the property of the State of Delaware at the proposal submission deadline. The contents of any proposal shall not be disclosed or made available to competing entities during the negotiation process.
10. **Officer Certification** – All vendors participating in this RFP will be required to have a company officer attest to compliance with RFP specifications and the accuracy of all responses provided. Please fill out the *Officer Certification Form*, Appendix C, and include it in your bid package.
11. **Vendor Errors/Omissions** – The SEBC will not be responsible for errors or omissions made in your proposal. You will be permitted to submit only one proposal. You may not revise submitted proposals by substituting pages or information after the applicable deadline.
12. **Modifications to Submitted Proposal** – Changes, amendments or modifications to proposals shall not be accepted or considered after the time and date specified as the deadline for submission of proposals. However, vendors may modify or withdraw its complete proposal by written request, provided that both proposal and request is received by Ms. Laurene Eheman **prior** to the proposal due date and time. Pages for substitution will not be accepted or allowed. The proposal may be re-submitted in accordance with the proposal due date in order to be considered. For example, the box is received on the Wednesday before the Friday deadline. Since the box remains unopened it can be removed by the bidder up until the deadline and substituted with a sealed box containing the revised proposal.
13. **General Modifications to RFP** – The SEBC reserves the right to issue amendments or change the timelines to this RFP. All firms who submitted an Intent to Bid notice will be notified in writing via e-mail of any modifications made by the SEBC to this RFP. If it becomes necessary to revise any part of the RFP, an addendum will be emailed to all vendors who submitted an Intent to Bid and it will also be posted on the State of Delaware’s website at www.bids.delaware.gov.
14. **Proposal Clarification** – The SEBC may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications (known as “follow-ups”) will be requested in writing and the vendor’s responses will become part of the proposal.

15. **References** – The SEBC may contact any customer of the vendor, whether or not included in the vendor’s reference list, and use such information in the evaluation process. Additionally, if applicable to the scope of work or services in this RFP, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for the State of Delaware personnel for these visits. Please note that the consulting firm Willis Towers Watson will be contacting references provided by bidders in response to this RFP on the SEBC’s behalf.
16. **Time for Acceptance of Proposal** – The bidder agrees to be bound by its proposal for a period of at least 180 days, during which time the State may request clarification or corrections of the proposal for the purpose of the evaluation. The State reserves the right to ask for an extension of time if needed.
17. **Incurred Costs** – This RFP does not commit the SEBC to pay any costs incurred in the preparation of a proposal in response to this request and vendor/bidder agrees that all costs incurred in developing its proposal are the vendor/bidder's responsibility. The State shall bear no responsibility or increased obligation for a vendor’s failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.
18. **Basis of Cost Proposal** – Your proposal must be based on your estimated cost of all expenses for the services and funding arrangements requested.
19. **Certification of Independent Price Determination** – By submission of a proposal, the proposing firm certifies that the premium rates or fees submitted in response to the RFP have been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other proposing firm or competitor relating to those premium rates or fees, the intention to submit a proposal, or the methods or factors used to calculate the fees or premium rates proposed. Please fill out the *State of Delaware Non-Collusion Statement*, Appendix B, and include it in your bid package.
20. **Improper Consideration** – Bidder shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, group of employees, retirees or agent of the SEBC in an attempt to secure favorable treatment or consideration regarding the award of this proposal.
21. **Representation Regarding Contingent Fees** – If it is your business practice to engage services from any person or agency to secure or execute any of the services outlined in this RFP, any commissions and percentage, contingent, brokerage, service, or finder’s fees must be included in your proposed rates. The SEBC will not pay any separate brokerage fees for securing or executing any of the services outlined in this RFP. **Therefore, all proposed fees must be net of commissions and percentage, contingent, brokerage, service or finders’ fees.**

22. **Confidentiality** – All information you receive pursuant to this RFP is confidential and you may not use it for any other purpose other than preparation of your proposal.
23. **Solicitation of State Employees** – Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State’s employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with the vendor, without prior written approval of the State’s contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor’s proposal.

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

24. **Consultants and Legal Counsel** – The SEBC may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors’ responses. Bidders shall not contact the consultant or legal counsel on any matter related to this RFP unless written permission and direction is provided.
25. **Contact with State Employees** – Unless expressly requested to contact another State employee or SBO’s consulting firm, direct contact with State of Delaware employees regarding this RFP other than the designated contact, Ms. Laurene Eheman, is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business with the State who require contact in the normal course of doing that business.
26. **Organizations Ineligible to Bid** – Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.
27. **Exclusions** – The PRC reserves the right to refuse to consider any proposal from a vendor who:
 - a. 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;
 - b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;

- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as:
 - i. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - ii. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
 - iii. Has violated ethical standards set out in law or regulation; and
 - iv. 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 suspension or debarment by another governmental entity for a cause listed in the regulations.

III. Minimum Requirements

The minimum requirements are mandatory.

Failure to meet any minimum requirements may result in disqualification of the proposal submitted by your organization. Please review Section II.A., Proposal Response Requirements for additional guidelines.

Instructions:

!!! IMPORTANT !!!

- A. **Clear and Succinct** – Whenever applicable, you must clearly and succinctly indicate how your standard procedures would be modified in order to accommodate any specific requirements of the State that deviate from your standard procedures.
- B. **Responsiveness** –
- Generic responses or stock answers that do not address State-specific requirements will be deemed unresponsive.
 - “Will discuss” and “will consider” are not appropriate answers.
 - All questions are important to the State and therefore you may not answer that a topic is not applicable unless you specifically state why it is a service that does not apply for the plans or programs you are proposing.
- C. **Respond to Each Question** –
- If a question is repeated in multiple sections and your answer is the same, please do not refer to your answer in another section but copy it under each question.
 - **DO NOT LEAVE A RESPONSE BLANK!** You must acknowledge that you believe the item does not apply and provide a reason why! Otherwise, we will need to ask you to reply in a follow-up question.
- D. **Incumbents** – If your organization is a current vendor, you must reply with a full explanation to every question since the review committee may not be familiar with the current contract or your services.
- E. **Best and Final Offer** – Best and final rates may not be requested after your bid submission. Please provide your best and final rates or offer with your initial proposal.
- F. **Numbering** – Please do not change the numbering of a question, even if there is an error in the sequence or a duplication.

G. Checkboxes and Long Responses – In some sections there is a checkbox format. It does not work, so please bold the selection. If the response is more than a few sentences long, please insert your response below the question and not in the third column so that the electronic and hard copy document is more manageable. Use your best judgment for easy readability.

INTRODUCTION

As an introduction, please provide your company’s full legal name (i.e., used for financial filing), home office address and telephone number, and the address and telephone number of additional offices, if any, that would provide the services requested under this RFP; please indicate which services would be provided by the additional, non-home office. Include the name and information for the primary contact, including phone number and email address, for responding to this RFP. Include your company’s website URL.

1.0 Core Capabilities and Experience

#	Minimum Requirement	Response
1.01	<p>The selected vendor must have at least five (5) years’ experience as an organization in providing the type of services to be procured through this competitive RFP process. Indicate if the experience is in medical or prescription audits or both. Please confirm that you have reviewed the Scope of Services included in this RFP and that you have provided these services for other clients. The determination of the length of time an entity has provided these services will be based upon the initial date the entity established a contractual relationship to provide such services. The proposing organization must provide sufficient detail to demonstrate it has experience in working with employee assistance programs similar in size and complexity. Because more detailed questions follow, please provide <u>only a broad outline</u> here of the organization’s years of experience and qualifications listed in the Scope of Services</p>	<p><i>(Pick one of the following)</i></p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
References		
<p>Your company must have proven ability to perform the services described in this RFP. Of your company's clients that you have audited within the last three years, please list three (3) references that have an excess of 30,000 eligible lives. If possible, at least one (1) reference should be a public sector client, though this is not a requirement. For each reference, indicate any involvement by staff members who will be servicing the State's account in the event of contract award.</p> <p>Please confirm ALL references provided in your response include valid contact information (i.e., name, phone number, email address, etc.) and are aware that they will be contacted during the RFP evaluation process. Please note that the consulting firm Willis Towers Watson will be contacting references on the SEBC’s behalf.</p>		<p><i>(Pick one of the following)</i></p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>

#	Minimum Requirement	Response
Note: At least three references are required on this section.		
1.02 (a)	<p data-bbox="300 367 1117 499">Please provide three (3) references for customers audited in the past three years. The State of Delaware would prefer at least one public sector customer reference of comparable size; however, this is not required. For each reference, indicate any involvement by staff members who will be servicing the State's account in the event of contract award.</p> <p data-bbox="300 506 1117 541">a. Customer Name</p> <p data-bbox="300 548 1117 583">Customer Principal Location</p> <p data-bbox="300 590 1117 667">Total Number of Eligible Lives (employees, dependents, retirees, etc.)</p> <p data-bbox="300 674 1117 709">Programs Audited (i.e., Medical, Pharmacy)</p> <p data-bbox="300 716 1117 751">Effective Date of Contract</p> <p data-bbox="300 758 1117 793">Customer Contact Name</p> <p data-bbox="300 800 1117 835">Job Title</p> <p data-bbox="300 842 1117 877">Address</p> <p data-bbox="300 884 1117 919">Telephone Number</p> <p data-bbox="300 926 1117 961">Email</p> <p data-bbox="300 968 1117 1003">Name of Account Manager</p> <p data-bbox="300 1010 1117 1087">Any involvement by staff members who will be servicing the State's account in the event of contract award? (If yes, describe)</p> <p data-bbox="300 1094 1117 1129">b. Customer Name</p> <p data-bbox="300 1136 1117 1171">Customer Principal Location</p> <p data-bbox="300 1178 1117 1255">Total Number of Eligible Lives (employees, dependents, retirees, etc.)</p> <p data-bbox="300 1262 1117 1297">Programs Audited (i.e., Medical, Pharmacy)</p> <p data-bbox="300 1304 1117 1339">Effective Date of Contract</p> <p data-bbox="300 1346 1117 1381">Customer Contact Name</p> <p data-bbox="300 1388 1117 1423">Job Title</p> <p data-bbox="300 1430 1117 1465">Address</p> <p data-bbox="300 1472 1117 1507">Telephone Number</p> <p data-bbox="300 1514 1117 1549">Email</p> <p data-bbox="300 1556 1117 1591">Name of Account Manager</p> <p data-bbox="300 1598 1117 1675">Any involvement by staff members who will be servicing the State's account in the event of contract award? (If yes, describe)</p> <p data-bbox="300 1682 1117 1717">c. Customer Name</p> <p data-bbox="300 1724 1117 1759">Customer Principal Location</p> <p data-bbox="300 1766 1117 1843">Total Number of Eligible Lives (employees, dependents, retirees, etc.)</p> <p data-bbox="300 1850 1117 1885">Programs Audited (i.e., Medical, Pharmacy)</p> <p data-bbox="300 1892 1117 1927">Effective Date of Contract</p>	

#	Minimum Requirement	Response
	Customer Contact Name	
	Job Title	
	Address	
	Telephone Number	
	Email	
	Name of Account Manager	
	Any involvement by staff members who will be servicing the State's account in the event of contract award? (If yes, describe)	
1.03	Verify that the primary contact and/or lead auditor assigned to the State will attend the vendor interviews, if you are invited to participate (see Section I.D. Timeline/Deadlines for additional details).	<i>(Pick one of the following)</i> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain

2.0 Legal

#	Minimum Requirement	Response
2.01	<u>Delaware Business License:</u> Please state whether your company is appropriately licensed to do business in the State of Delaware and provide a copy of the license, or, confirm that prior to the execution of a contract, you would initiate the process of an application. Confirm your understanding that work cannot begin until your organization has a valid State of Delaware business license.	<i>(Pick one of the following)</i> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain
2.02	<u>Insurance Coverage:</u> If the contractual service requires the transportation of State employees, the vendor shall secure at its own expense the following coverage: a. Automotive Liability (Bodily Injury) \$100,000/\$300,000. b. Automotive Property Damage (to others) \$25,000. Additionally, the successful vendor must carry the following coverage: a. Comprehensive General Liability \$1,000,000 per person / \$3,000,000 per occurrence and/or b. Professional Liability \$1,000,000 per person / \$3,000,000 per occurrence and/or c. Miscellaneous Errors and Omissions (E&O) \$1,000,000 per person / \$3,000,000 per occurrence. If you believe that a type of coverage would not apply to your service, please explain. If awarded the contract:	<i>(Pick one of the following)</i> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain

#	Minimum Requirement	Response
	<p>a. Vendor shall provide 45 days written notice of cancellation or material change of any policies.</p> <p>b. Vendor shall provide a copy of the insurance certificate renewals within 30 days of renewal.</p> <p>c. the State of Delaware shall NOT be named as an additional insured.</p> <p>As an exhibit, please provide a copy of your certificate of insurance with the appropriate types and coverage levels. If you do not have the coverage and are awarded the contract, please confirm your understanding that you must provide a copy of your certificate of insurance before any work is done pursuant to the terms in the RFP and resulting contract.</p>	
2.03	<p><u>Background Check Provisions:</u> If your company is awarded the contract, please confirm your understanding that pursuant to 29 Del. C. § 6909B and effective November 4, 2014, the State does not consider the criminal record, criminal history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check provisions. Vendors can refer to 19 Del. C. § 711(g) for applicable established provisions.</p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
2.04	<p><u>Confidential and Proprietary Information, If Any:</u> State whether or not you are providing any information you declare to be confidential or proprietary for the purpose of exclusion from the public record under 29 Del. C. ch. 100, Delaware Freedom of Information Act. If so, you must follow the directions for submission in the <i>Confidentiality of Documents</i> and <i>Submission of Proposal</i> sections.</p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
2.05	<p><u>Responsibility for Redaction:</u> Please confirm your understanding and acceptance that the State is not responsible for incorrect redactions or reviewing your submission to determine whether or not any information asserted as confidential and proprietary is redacted. Mistakes in redactions are the sole responsibility of the bidder.</p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
2.06	<p><u>Fee Proposal:</u> Please confirm that you have filled out Appendix A, <i>Fee Proposal</i>, and included it in your bid package.</p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
2.07	<p><u>Non-Collusion Statement:</u> Please confirm that you have filled out Appendix B, <i>State of Delaware Non-Collusion Statement</i>, and include it in your bid package.</p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
2.08	<p><u>Officer Certification Form:</u> Please confirm you have filled out the <i>Officer Certification Form</i>, Appendix C, and included it in your bid package.</p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>
2.09	<p><u>Subcontractors – Subject to all Contract Terms:</u></p>	<p>(Pick one of the following)</p> <p><input type="checkbox"/> Confirmed</p>

#	Minimum Requirement	Response
	<p>The State requires your organization to confirm that all services identified in your proposal are provided solely by your organization and identify any services that may be provided by a subcontractor – including technology platforms. Other examples are graphics, mailing, and printing services. A subcontractor is any company that is under direct contract to perform services for the State’s account. Consequently, an example of a business that would provide services on the State’s account but is not a subcontractor is the United States Postal Service. Subcontractors are subject to all the terms and conditions of the RFP and the SEBC reserves the right to approve any and all subcontractors. If a subcontractor(s) is involved, note in your response to this question and complete Appendix E, <i>Subcontractor Information Form</i>, included herein for each subcontractor. The company OSD classification information is for self-identification only. Each vendor is required to submit the forms for their subcontractors.</p>	<input type="checkbox"/> Not confirmed, explain
2.10	<p><u>Employing Delawareans Report:</u> Please confirm you have filled out the <i>Employing Delawareans Report</i>, Appendix F, and included it in your bid package. The number of Delawareans employed by your organization are not taken into consideration during the evaluation or scoring of your bid.</p>	<p>(Pick one of the following)</p> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain
2.11	<p><u>Financial Ratings Form:</u> Please confirm you have filled out the <i>Financial Ratings Form</i>, Appendix G, and included it in your bid package.</p>	<p>(Pick one of the following)</p> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain
2.12	<p><u>Performance Guarantees:</u> If awarded the contract, please confirm your organization’s willingness to enter into performance guarantees. Please follow the instructions in Appendix H and include the completed <i>Performance Guarantees</i> form in your bid package. <i>If your offer does not receive a clarifying question or any other response from the State, it does not infer acceptance.</i> The State reserves the right to negotiate both financial and non-financial performance guarantees with the selected vendor.</p>	<p>(Pick one of the following)</p> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain
2.13	<p><u>Business Associate Agreement:</u> <i>Non-Incumbents Only</i> - Please confirm you will enter into the agreement, Appendix I. If you have suggested changes, please provide the document with redlines. However, please be advised that the State will not consider major changes. If you assert that a BAA does not apply to the service or product you would be providing, please provide the reason and the regulation or citation.</p>	<p>(Pick one of the following)</p> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain
2.14	<p><u>Data Use Terms and Conditions Agreement:</u> Please confirm your understanding that, in the event your firm is awarded the contract by the SEBC, that Appendix J, <i>Delaware Data Usage Terms and Conditions Agreement</i>, would apply and therefore</p>	<p>(Pick one of the following)</p> <input type="checkbox"/> Confirmed <input type="checkbox"/> Not confirmed, explain

#	Minimum Requirement	Response
	would require your firm’s signature and inclusion in a contract with the State.	
2.15	<p><u>Professional Services Agreement Template:</u></p> <p>Please confirm that Appendix K, a template contract with the terms applicable to the services in this engagement, has been reviewed by an attorney. Use a redline tracking format for any suggested changes. The State cannot “pre-negotiate” a contract with each bidder, therefore if there are suggested changes and the State does not respond that does not infer acceptance by the State. The proposal the SEBC selects will be a binding document. As such, the SEBC will expect the proposing firm to honor all representations made in its proposal. There would be an addition of a Statement of Work to the contract.</p>	<p><i>(Pick one of the following)</i></p> <p><input type="checkbox"/> Confirmed</p> <p><input type="checkbox"/> Not confirmed, explain</p>

IV. Questionnaire

Instructions

!!! IMPORTANT !!!

A. Responsiveness –

- Generic responses or stock answers that do not address State-specific requirements will be deemed unresponsive.
- “Will discuss” and “will consider” are not appropriate answers.
- All questions are important to the State and therefore you may not answer that a topic is not applicable unless you specifically state why it is a service that does not apply for the plans or programs you are proposing.

B. Respond to Each Question – DO NOT LEAVE A RESPONSE BLANK! You must acknowledge that you feel the item does not apply and provide a reason why! Otherwise, we will need to ask you to reply in a follow-up question.

C. Numbering – Please do not change the numbering of a question, even if there is an error in the sequence or a duplication.

D. Checkboxes and Long Responses – In some sections there may be a checkbox format. It does not work so please bold the selection. If the response is more than a few sentences long, please insert your response below the question and not in the third column so that the electronic and hard copy document is more manageable. Use your best judgment for easy readability.

E. Many questions are repeated between the medical and prescription contract compliance review sections (Sections 6 and 7, respectively). For organizations bidding on both medical and prescription drug audit services – if your responses to any of the questions in Section 7 (Prescription) are redundant with your response to similar questions in Section 6 (Medical), please reference those responses in Section 7 rather than repeating the same information in response to similar questions.

1.0 General Company Information

#	Question	Response
1.01	Please provide a brief history of your organization including founding date and ownership structure. Include information regarding any entity with more than a 10% ownership interest; specify any Third Party Administrator (TPA) or related entity, or any Pharmacy Benefit Manager (PBM) or related entity, that has any ownership interest. Include a summary of your status with respect to any past (within the last five (5) years), current, or prospective mergers and acquisitions. In addition, please describe your strategy towards growth and any immediate plans for expansion both nationally and in the State of Delaware's markets (if applicable). How many years has your organization been conducting independent Medical and/or Prescription contract compliance reviews?	
1.02	Referring to Minimum Requirement #1.01, as an exhibit, please describe your organization's experience, including the number of years of experience, with providing the scope of services outlined in Sections I.B. Proposal Objectives and I.C. Scope of Services, for plan sponsors of a size comparable to the State of Delaware. If your clients do not have plan sponsors of a size comparable to the State of Delaware, please respond based on your largest clients, and note their size (in covered lives). Please differentiate between those services which are provided by your employees and those provided by sub-contractors.	
1.03	Have you or any of your subsidiary or affiliated corporations ever been indicted or otherwise accused of any criminal misconduct within the past 10 years? If so, please explain and indicate the outcome as well as any actions and preventive measures now in place to prevent any repetition in the future.	
1.04	Describe any legal issues, conflicts of interest, or constraints that could conceivably affect the services provided to the State.	
1.05	What is your current staffing and professional qualifications of key operations and program administration personnel who would be supporting the State? List the total number of full-time and contract employees, and describe the primary location(s) of the contract compliance review staff and IT resources that will be performing the medical and/or prescription reviews.	
1.06	Identify whether your firm currently performs any work for, provides services to, or receives compensation from any TPA or related entity, and any PBM or related entity.	
1.07	Disclose fully any litigation instituted within the last five (5) years that involves your firm, any employee, any subsidiary or parent organization that directly affects or involves your firm's contract compliance review unit, noting in particular litigation involving the	

#	Question	Response
	State, any State agencies or any health plan vendors or PBMs that provide services to the State.	

2.0 Experience

#	Question	Response
2.01	How many contract compliance reviews similar in scope to the services required by this RFP did your firm conduct during calendar year 2019? Please differentiate between medical and prescription drug contract compliance reviews.	
2.02	Provide the number of contract compliance reviews completed or currently underway in 2020. Please differentiate between medical and prescription drug contract compliance reviews.	
2.03	Describe any significant actions taken or pending against your company or any entities of your company by clients that contested the results of your findings from a medical and/or prescription drug contract compliance review.	
2.04	Has your firm ever been prevented by a vendor from performing a client's medical and/or prescription drug contract compliance review? If yes, describe the circumstances.	
2.05	Briefly describe any aspects of your medical and/or prescription drug contract compliance review process that are unique to your firm and that distinguish you from your competitors.	
2.06	Identify any restrictions you believe the vendor (i.e., medical TPA and/or PBM) may present in completion of the scope of services defined in this RFP.	

3.0 Project Team

#	Question	Response
3.01	Identify a single contact that will serve as project manager to whom the State would contact to resolve review issues, respond to inquiries, etc. Provide their name and contact information. If you are bidding on both medical and prescription contract compliance reviews, please specify whether this person would be responsible for project managing both types of reviews.	
3.02	As an attachment, identify all professional and supervisory staff who will be responsible for the State's account and their areas of responsibility, including whether they will be assigned to the	

#	Question	Response
	medical and/or prescription drug review. Provide a resume for each team member that includes their name, title, task assignment, office of origin, education, professional expertise, number of years with your firm, and experience related to their assigned role.	

4.0 Project Management

#	Question	Response
4.01	How long after being awarded this business would your organization be ready to conduct a kick-off meeting with State representatives?	
4.02	Explain how you will establish coherent guidelines that will ensure consistency of techniques, methodology used, and standardization of operations for all reviews.	
4.03	How will the State remain informed on your progress with each review (i.e., medical and/or prescription drug)?	
4.04	The State will require an in-person on-site discussion in Dover, Delaware, for each contract compliance review report. (The fee is to be included in the cost proposal as directed on the Appendix A.) Who will present the review reports to the State?	
4.05	Include a detailed timeline for your proposed approach to fulfilling the Scope of Services and include a targeted date for a preliminary report(s) for the medical and/or prescription drug review(s).	

5.0 Operational Review

Note: If you are bidding on both medical and prescription contract compliance reviews, please specify whether there are any differences in your process for either type of review.

#	Question	Response
5.01	Provide an overview of your operational review process (limit one page).	
5.02	Confirm the proposed services will address the review components identified in Section I.C., <i>Scope of Services</i> . Identify any tasks not included and provide a brief explanation for any variations.	
5.03	Describe how you propose to evaluate staffing levels and experience of staff assigned to the State's account.	
5.04	How will you determine that adequate training procedures are used by the vendors to ensure that recently hired personnel are adequately	

#	Question	Response
	trained in administrative procedures, claims processing and maintaining confidentiality?	
5.05	If your review uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?	
5.06	How will you determine and report on claims complaint activity reported/maintained by vendors?	
5.07	How will your review of coordination of benefits (COB) look separately at primary and secondary insurance coverage responsibility? How will you evaluate the processing methodology used by the vendor (i.e., pay and pursue vs. pursue and pay)?	
5.08	How will you report on the vendor's subrogation opportunities pursued, recovered or lost? If this service is outsourced, will you determine the outcome of individual cases?	
5.09	How will you determine that the vendors have an adequate system to identify potential areas of claim abuse such as fraudulent claims, duplicate claims, overcharging by providers, unnecessary physician services, etc.?	
5.10	How will you decide that appropriate administrative procedures are followed by the vendor to insure compliance with contractual obligations?	
5.11	How will you assess claims payment and claims appeals turn-around time to ensure that standards are strictly enforced both?	
5.12	How will you review and report on security breaches?	

6.0 Medical Contract Compliance Review

Note: Responses to the following questions should clearly explain if the validation steps will include a sample or 100% review of all claims. Identify the sample size and any vendor variations where appropriate.

#	Question	Response
6.01	Provide an overview of your proposed medical claims review process (limit one page). Distinguish any vendor modifications.	
6.02	Identify the number of contract compliance reviews your firm has conducted since January 1, 2019 with:	
	a) Any Blue Cross Blue Shield company	
	b) Highmark Delaware	

#	Question	Response
	c) Aetna	
6.03	Will your staff be assigned to work sequentially or concurrently in order to review Highmark Delaware and Aetna?	
6.04	Do you anticipate overlapping work assignments in order to meet the State's deadline?	
6.05	How long will it take your staff to complete each of the contract compliance reviews requested?	
	a) Highmark Delaware	
	b) Aetna	
6.06	What is your process for reconciling issues identified with the vendor?	
6.07	What steps will your reviewers take to minimize disruption and reduce the impact of the contract compliance review on plan administrators and their staff?	
6.08	How will your reviewers resolve problems/discrepancies that may occur during the contract compliance review (i.e., interpersonal problems or interpretation of contractual obligations)?	
6.09	If your review uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?	
6.10	Explain how your reviewers emphasize and/or report on areas, which if changed or corrected, could result in cost savings to the program.	
6.11	Confirm the medical claims reviewed will include testing of 100% of all claims with a sample for onsite validation restricted at Highmark Delaware and Aetna for each of the following. Provide an explanation if your proposal does not test 100% of all claims or does not review for the following:	
	a) potential duplication of payments	
	b) reimbursement of expenses excluded or limited by plan design	
	c) appropriate patient cost-shares (i.e., copayment, deductible, coinsurance)	
	d) consistency in coordination of benefits, including subrogation and workers' compensation	
6.12	How will you verify the validity of any processing errors discovered during an electronic review of claims?	
6.13	State the stratified selection methodology and minimum sample size to be surveyed for measurement of overall administrative	

#	Question	Response
	performance to achieve the required 95% confidence, and whether confidence is projected for incidence and/or financial accuracy.	
6.14	Provide an overview of the process you propose to ensure compliance with performance guarantees and to identify/determine appropriate damage assessments.	
6.15	Confirm the statistically valid claims sample to be reviewed for the administrative components outlined in the Section I.C., <i>Scope of Services</i> . Provide an explanation if a stated task(s) is not proposed.	
6.16	Indicate how your reviewers define errors; explain any weighting. Will your definition be consistent with that used in the administrator's established guarantees?	
6.17	Provide your definition of payment and non-financial errors with mention of any overlap in classification of procedural errors and payment errors.	
6.18	How will you evaluate the automated system used to process/pay claims? How will you make an assessment of any systems that are not automated?	
6.18	How will you assess how well manual systems are integrated with automated systems?	
6.19	How will you assess system edits, linkages among systems and the frequency and level of manual intervention by administrators/staff?	
6.20	Will you determine if pre-certification for out-of-network admissions has been obtained from the vendors?	
6.21	How will you confirm that vendors subscribe to appropriately established reasonable and customary fee criteria?	
6.22	Describe your methodology for evaluating that DRGs are grouped correctly.	
6.23	Describe how you will assess plan cost savings (hospital reviews, large case management).	
6.24	How will you confirm accuracy of the total amount of "out-of-pocket expenses" paid by enrollees separate and apart from the required copays?	
6.25	How will you confirm that benefit accumulations are accurately maintained on-line?	
6.26	How will you assess denied/pending claims (e.g., request for additional information)?	
6.27	Describe your methodology for reporting on claims backlog and its effect, if any, on the claims adjudication process.	

#	Question	Response
6.28	How will you identify claims processing problems or areas in need of further review?	
6.29	Describe how you will report on over-payment by type (hospital, provider, member), the total amount of refund dollars collected by the vendor, reasons for over-payment and recommended methods for reducing over-payment.	
6.30	How will you determine if an adequate system of reviews is used when problem claims are encountered from either subscribers or providers?	
6.31	What steps will you take to review, evaluate and report on the accuracy and efficiency of the claim submission process (including electronic data interface between hospitals, providers and vendors)?	
6.32	How you review surgical services including claims paid for related/unrelated surgeries and bundling and unbundling of procedures?	
6.33	What are the most significant results achieved from the reviews for the customer references you provided within Section II, <i>Minimum Requirements</i> ?	
6.34	Do you have a standing agreement(s) (confidentiality, audit, non-disclosure) with Highmark and/or Aetna? If not, what has been your experience in negotiating those agreements with Highmark and/or Aetna? How long from notice to award will it take you to get signed agreements?	
6.35	Do you have experience with reviewing the accuracy and appropriateness of value-based payments ⁹ that are paid by the medical TPA to high performing providers, and/or performance guarantees related to such payments within plan sponsors' contracts? If so:	
	a) Please describe how you would do this, including how you would verify the performance of the network providers who would receive these value-based payments.	
	b) Are there any sources of provider quality data outside of the medical TPA that you would rely on to verify the appropriateness of these value-based payments?	
	c) Please comment on the number of years and number of audits within which your firm has reviewed these types of value-based payments and/or TPA performance against contractual guarantees related to such payments.	

⁹ Value-based payments are defined by the Health Care Payment Learning & Action Network's Alternative Payment Model framework as non-"fee-for-service" payments within Categories 2-4. For further information, see <https://hcp-lan.org/>.

#	Question	Response
	d) Does your team include any specialized and/or credentialed staffing that is dedicated or designated to auditing these types of payments?	

7.0 Prescription Drug Contract Compliance Review

Note: For organizations bidding on both medical and prescription drug contract compliance review services – if your responses to any of the questions below are redundant with your response to similar questions in the above Section 6.0 of this RFP, please reference those responses in Section 6.0 rather than repeating the same information in response to similar questions below.

Responses to the following questions should clearly explain if the validation steps will include a sample or 100% review of all transactions. Identify the sample size where appropriate.

#	Question	Response
7.01	Provide an overview of your proposed prescription drug review process (limit one page).	
7.02	Identify the number of Express Scripts contract compliance reviews your firm has conducted since January 1, 2019.	
7.03	Do your reviewers maintain any medical licensure/credentials that enhance their qualifications to conduct a prescription drug claim contract compliance review?	
7.04	Confirm the prescription drug contract compliance review will include testing of 100% of all claims with a sample for validation to be coordinated per Express Scripts' policy for each of the following:	
	a. independent verification of average wholesale price (AWP)	
	b. comparison of actual aggregate claim discounts, dispensing fees, and rebates to contractual guarantees	
	c. comparison of actual claim adjudication to plan design and benefit rules	
	d. member cost share	
	e. duplicate claims	
	f. coverage rules	
	g. identification of contractual term improvement opportunities	
7.05	Confirm the prescription rebate review includes the following. Provide an explanation if your proposal does not test 100% or does not review for the following.	

#	Question	Response
	a. identification of all rebatable claims and identification of categories properly excluded from rebates, according to the PBM contract	
	b. verification of earned rebates by quarter by National Drug Code (NDC)	
	c. comparison of earned rebates file to manufacturer rebate submission file	
	d. onsite review of applicable manufacturer contracts to verify all rebate amounts due are properly paid to the State	
	e. comparison of PBM receipts from manufacturers to earned rebate file	
7.06	How long do you anticipate the contract compliance review will require from release of your data request to the date a final report is presented to the State?	
7.07	Identify any obstacles you anticipate will be presented by Express Scripts in allowing your firm to provide the services defined in Section I.C., <i>Scope of Services</i> .	
7.08	What is your process for reconciling issues identified with the vendor?	
7.09	What steps will your reviewers take to minimize disruption and reduce the impact of the contract compliance review on plan administrators and their staff?	
7.10	How will your reviewers resolve problems/discrepancies that may occur during the contract compliance review (i.e., interpersonal problems or interpretation of contractual obligations)?	
7.11	If your review uncovers claims administration weaknesses, are these discussed with the vendor prior to inclusion in your final report?	
7.12	Explain how your reviewers emphasize and/or report on areas, which if changed or corrected, could result in cost savings to the program.	
7.13	How will you verify the validity of any processing errors discovered during an electronic review of claims?	
7.14	What method will you use to review State subscriber eligibility? Will your review include a sample or conduct a comprehensive review of all enrollees?	
7.15	Explain how your reviewers will assess the retail claims adjudication system used by the PBM (including coding accuracy, etc.), and related performance guarantees.	
7.16	Describe the steps your reviewers will take to confirm that the PBM's claim payment system permits and correctly assesses multi-tiered	

#	Question	Response
	co-pays (including the assessment of co-pays for brand name drugs when generic drugs are available and copays assessed to participants). How will you evaluate utilization of the formulary?	
7.17	How will your reviewers review and assess the quality of Drug Utilization Review (DUR) services (prospective, concurrent and retrospective) provided by the PBM or its subcontractor?	
7.18	How will your reviewers report any weaknesses of DUR and provide recommendations for improvement?	
7.19	How will your reviewers assess that the State is receiving maximum rebates negotiated by the PBM with manufacturers?	
7.20	Do you have a standing agreement(s) (confidentiality, audit, non-disclosure) with Express Scripts? If not, what has been your experience in negotiating those agreements with Express Scripts? How long from notice to award will it take you to get signed agreements?	
7.21	During the course of conducting contract compliance reviews on behalf of other plan sponsor, have you had any experience with auditing other pricing arrangements that exist between the PBM and other members of the drug supply chain (e.g., between the PBM and drug manufacturers, or between the PBM and independent pharmacies)? If so:	
	a. What specifically were you able to audit?	
	b. What contractual provisions were in place between the plan sponsor and PBM that allowed your firm to do so?	
	c. For how many clients, and how many audits, have you been able to do this?	
7.22	Have you ever audited the spread on traditional PBM contracts on behalf of a plan sponsor? If so:	
	a. Please provide a high-level description of the sort of agreement(s) that were in place between a plan sponsor and the PBM in order to allow this to happen.	
	b. For how many clients, and how many audits, have you been able to do this?	
7.23	Please describe any experience you've had with auditing the performance of Express Script's SafeGuardRx clinical programs, such as the Hepatitis Care Value, Cholesterol Care Value, Diabetes Care Value, and Inflammatory Conditions Care Value programs.	
7.24	Do you have experience with reviewing the accuracy and appropriateness of any other types of value-based arrangements with PBMs that guarantee financial or quality outcomes for better	

#	Question	Response
	management of high cost medications and/or high cost conditions? If so:	
	Please describe how you would do this, including how you would verify the performance of the PBM and/or any programs or vendors used by the PBM to clinically manage the plan sponsor's population that is subject to this sort of performance guarantee.	
	Are there any sources of provider quality data outside of the PBM that you would rely on to verify performance?	
	Please comment on the number of years and number of audits within which your firm has reviewed these types of value-based arrangements and/or PBM performance against contractual guarantees related to such arrangements.	
	Does your team include any specialized and/or credentialed staffing that is dedicated or designated to auditing these types of arrangements?	

V. Technical Standards and Security Requirements

The following minimum requirements are mandatory. Failure to meet any of these proposal criteria may result in disqualification of the proposal submitted by your organization. Omission of responses and forms could result in a determination that your bid is non-responsive.

REQUIREMENTS -

1. Security and Encryption:

Computer, network, and information security is of paramount concern for the State and the Department of Technology and Information.

- a. Threats - The SANS Institute and the FBI have released a document describing the *Top 20 Internet Security Threats*. The document is available at www.sans.org/top20.htm for your review. The contractor confirms that any systems or software provided by the contractor are free of the vulnerabilities listed in that document. (A response that security threats are always changing is not acceptable.) Simply reply that you meet the conditions in the policy and do not explain how.

Response:

- b. Appendix J, *Delaware Data usage Terms and Conditions Agreement* - All the terms apply because the data that will be audited is non-public data. If awarded the contract, your organization must sign the document as required by the Department of Technology and Information (DTI) and it will be an appendix to the contract. If there are terms that you assert do not apply to this engagement, please provide a reason and explanation here.

Response:

- c. Please state whether or not Delaware raw data will be transmitted via email or accessible on a mobile device. If so, the following requirements apply. Simply reply whether or not the requirement applies and that you meet the conditions in the policy, or will by the effective date of the contract, and do not explain how.

<http://dti.delaware.gov/pdfs/pp/SecureEmail.pdf>

Response:

<http://dti.delaware.gov/pdfs/pp/MobileDeviceEncryptionStandard.pdf>

Response:

APPENDICES

APPENDIX A FEE PROPOSAL

Applicable to Both Medical and Prescription Reviews

1. Confirm your fees are presented on an “all inclusive” basis, including, but not necessarily limited to, data collection, other start-up requirements, the cost of any sub-contractors, travel expenses, *per diem*, salaries, and administrative overhead.

Response:

2. Confirm your understanding and acceptance that for both the medical and prescription contract compliance reviews, FY19 and FY20 (and Plan Years 2019 and 2020 for the Employer Group Waiver Program) will be audited concurrently.

Response:

3. Confirm your understanding that the initial contract term (first “year” of the contract) may be less than 12 months due to an effective date later than July 1, 2020 but ending on June 30, 2021 (FY21). Years 2 and 3 of the contract with the State will correspond with the fiscal years of (FY22) July 1, 2021 – June 30, 2022 and (FY23) July 1, 2022 – June 30, 2023. At the State’s discretion, the contract may be extended for up to two additional years – FY24 and FY25.

Response:

4. Confirm your understanding that the vendor must guarantee their rates until the Scope of Work for an audit period is completed to the State’s satisfaction. For example, if the rates raise in optional Year 4 and an audit is not completed until after the start of Year 4 in July, the rates will not increase.

Response:

5. Confirm your understanding that the State may require the Contractor to provide contract compliance review services for the medical program for a third, one-year period (July 1, 2020 – June 30, 2021 [FY21]) during the initial contract term.

Response:

6. Confirm your understanding that the State may require the Contractor to provide contract compliance review services for the prescription program for two additional one-year periods during the initial contract term:
 - a. Commercial Plan: July 1, 2020 – June 30, 2021 (FY21)
 - b. Employer Group Waiver Program: January 1, 2020 – December 31, 2020 (Plan Year 2020)

Response:

7. Confirm your understanding that:
 - a. At the State’s sole discretion, the SEBC may review and compare a fixed rate offering with any other offer that a vendor proposes through this RFP process.
 - b. The State will also consider an offer if the vendor is proposing discounted pricing for the award of both programs.
 - c. At its sole discretion, and as it serves the best interest of the State, the State reserves the right to negotiate for an award against any pricing basis if two or more separate fee offerings are proposed by the same vendor.
 - d. Final selection of the pricing to be negotiated and accepted will be subject to the best interest of the State.

Response:

8. Confirm your understanding that best and final rates may not be requested after your bid submission. Please provide your best pricing for each program and a pricing for the award of both programs, if applicable.

Response:

9. Directions for Submitting your Fee Proposal: As a continuation of requirements #1 through #7 above, please detail your pricing offer per program(s) on this page as Appendix A.

Note: Your fixed fee pricing should be provided per contract compliance review, which is defined as 1 review of a plan administrator (either TPA or PBM) for the State, regardless of the claim time period(s) captured in each review. For instance, 1 contract compliance review could include 12 or 24 months of claim data.

FIXED FEE – CONTRACT COMPLIANCE REVIEW

Administrator	Total Fixed Fee per Contract Compliance Review Maximum Billable Amount
Highmark Delaware	
Aetna	
Express Scripts	
Total	

- a. Please indicate whether or not your organization is willing to offer a rate cap for additional years of a contract with the State if the State chooses to exercise its option to renew for one or both 1-year periods. If so, please state a rate cap percentage for years four and five.

Response:

- b. If your organization quotes on both medical and prescription drug contract compliance review services, but the SEBC only awards you with one of the two, please confirm your pricing quoted above would still apply if not awarded both.

Response:

- c. In your proposal, please indicate whether, upon request, if one trip to Dover, Delaware, for a presentation of your findings is included in your fee.

Response:

- d. **Fixed Fee:** Please confirm your acceptance that for a fixed fee proposal, your organization will bill at the following schedule:

	Medical Program Review	Prescription Program Review
Completion of On-Site Review	1/3 of Fee	n/a
Delivery of Draft Report	1/3 of Fee	1/2 of Fee
Delivery of Final Report	1/3 of Fee	1/2 of Fee

Response:

- e. Please add any additional information you would like to include to be able to clearly communicate your Fixed Fee proposal.

Response:

APPENDIX B

STATE OF DELAWARE NON-COLLUSION STATEMENT

This is to certify that the undersigned vendor 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, **and further certifies that it is not a subcontractor to another vendor who also submitted a proposal as a primary vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Human Resources.

It is agreed by the undersigned vendor that the signed delivery of this bid represents the vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Human Resources.

COMPANY NAME _____

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

(Check one)

NAME OF AUTHORIZED REPRESENTATIVE _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

STATE OF DELAWARE
LICENSE NUMBER or CONFIRM WILL
APPLY IF AWARDED A CONTRACT

FEDERAL E.I. NUMBER _____

COMPANY CLASSIFICATIONS:	Certification type(s)	Circle all that apply	
	CERT. NO.:	Minority Business Enterprise (MBE)	Yes
	Woman Business Enterprise (WBE)	Yes	No
	Disadvantaged Business Enterprise (DBE)	Yes	No
	Veteran Owned Business Enterprise (VOBE)	Yes	No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	No

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

PURCHASE ORDERS SHOULD BE SENT TO (COMPANY NAME): _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED FOR YOUR BID TO BE CONSIDERED

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

Notary Public _____ My commission expires _____

City of County of State of _____

APPENDIX C

OFFICER CERTIFICATION FORM

Please have an officer of your company review and sign this worksheet to confirm the information is valid. Please include completed form with proposal.

Officer's Statement	
Company's Legal Name	
Company's Marketing Name (if different)	
Street Address	
City	
State	
Zip	
Phone Number	
Fax Number	
Email Address	
Name of Officer Completing Statement	
Title of Officer Completing Statement	
Phone Number of Officer Completing Statement	
Email Address of Officer Completing Statement	

I certify that our response to the Request for Proposal for Medical and Prescription Insurance Audit Services, DHR20004-Med_Audit, is complete and accurate to the best of my knowledge and contains no material omissions or misstatements.

Officer's Signature

Date Signed

APPENDIX E

SUBCONTRACTOR INFORMATION FORM
*****Only for subcontractors that meet the criteria described in the corresponding term in the Minimum Requirements section*****

PART I – STATEMENT BY PROPOSING VENDOR/CONTRACTOR		
Name of PROPOSING VENDOR/CONTRACTOR:		
Name and Address of SUBCONTRACTOR:		
Company OSD Classification, if any:		
Certification Number:		
Check all that apply: Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No		
DETAILED DESCRIPTION OF WORK BY SUBCONTRACTOR		
PROPOSING VENDOR/CONTRACTOR:		
NAME:	BY (<i>Signature</i>)	DATE SIGNED
TITLE:		
ACKNOWLEDGEMENT BY SUBCONTRACTOR		
NAME	BY (<i>Signature</i>)	DATE SIGNED
TITLE		

APPENDIX F

EMPLOYING DELAWAREANS REPORT¹⁰

As required by House Bill # 410 (Bond Bill) of the 146th General Assembly and under Section 30, no bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1.	Number of employees that would reasonably be anticipated to be employed on this account.	
2.	Percentage of such employees who are <i>bona fide</i> legal residents of Delaware.	
3.	Total number of employees of the bidder.	
4.	Total percentage of employees who are <i>bona fide</i> residents of Delaware.	

If subcontractors are to be used:

1.	Number of employees who are residents of Delaware.	
2.	Percentage of employees who are residents of Delaware.	

¹⁰ The number of Delawareans employed by your organization are not taken into consideration during the evaluation or scoring of your bid.

APPENDIX G

FINANCIAL RATINGS

Carrier's most recent rating or filing (identify date) from the following agencies:

Vendor Ratings	Rating
A.M. Best: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	
Standard & Poor's: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	
Fitch: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	
Moody's: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	

1. Has there been any change in your organization's ratings in the last two years? If yes, please explain the nature and reason(s) for the change.
2. Are there any outstanding legal actions pending against your organization? If so, please explain the nature and current status of the action(s).
3. What fidelity and surety insurance or bond coverage does your organization carry to protect your clients? Specifically describe the type and amount of the fidelity bond insuring your employees, which would protect this plan in the event of a loss.
4. Does your organization agree to furnish a copy of all such policies for review by legal counsel if requested?
5. Do you anticipate any mergers, transfer of company ownership, sales management reorganizations, or departure of key personnel within the next three (3) years that might affect your ability to carry out your proposal if it results in a contract with the State of Delaware? If yes, please explain.
6. Is your Company affiliated with another company? If yes, please describe the relationship.

APPENDIX H

PERFORMANCE GUARANTEES

Instructions: The State requires bidders to agree to place a percentage of fees per contract year at risk for performance guarantees. If you propose alternative guarantees, performance results, or definitions, please use a strikeout font and insertion. You are encouraged to provide additional fees at risk; bidders that do so will be viewed favorably by the State.

If your offer does not receive a clarifying question or any other response from the State, it does not infer acceptance. The State reserves the right to negotiate both financial and non-financial performance guarantees with the selected vendor.

Terms: The performance guarantees will be measured when stated, as applicable, and at the end of the project. Penalties will be assessed and paid within thirty (30) days.

Guarantee	Definition/Calculation	% of Fees at Risk
Continuity of Lead Personnel	The principal project manager will have oversight for the entire project. Individuals will be assigned to lead the medical claims and prescription claims audit.	2.5%
Timely Updates	Bi-weekly status calls or emails for the duration of the project unless the State cancels or declines.	2.5%
Draft Audit Report - Medical	A draft report will be presented to the State, Highmark and Aetna no more than ten (10) business days from the dates vendor/auditor receives all onsite feedback.	2.5%
Draft Audit Report – Prescription	The preliminary audit findings will be presented to the State no more than ten (10) business days from the completion of the electronic claims analysis.	1.25%
	A draft report will be presented to ESI no more than ten (10) business days from the date that ESI responds to preliminary audit findings following electronic claims analysis.	1.25%
Final Report	A final report will be presented no more than fifteen (15) business days from the date vendor/auditor(s) receive responses from the administrators.	5.0%
	Total	15%

APPENDIX I

NON-INCUMBENT ONLY

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BA Agreement”) is undertaken pursuant to the parties’ performance of a certain contract (“Contract”) effective , by and between the State of Delaware by and through the State Employee Benefits Committee (“Plan Sponsor”), on its own behalf and on behalf of the group health plan it sponsors for employees or other covered persons (the “Plan”), and (“Contractor”).

In the performance of services on behalf of the Plan pursuant to the Contract, and in order for Contractor to use, disclose or create certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below), Contractor is a Business Associate of the Plan as that term is defined by the Health Insurance Portability and Accountability Act of 1996, including the modifications required under the American Recovery and Reinvestment Act of 2009 (“ARRA”), and its implementing Administrative Simplification regulations (45 D.F.R. §§142, 160, 162 and 164) (“HIPAA”). Accordingly, Contractor, the Plan and Plan Sponsor mutually agree to modify the Contract to incorporate the terms of this BA Agreement to comply with the requirements of HIPAA, and to include additional provisions that Plan Sponsor, the Plan and Contractor desire to have as part of the Contract.

Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

I. DEFINITIONS

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

A. Specific Definitions

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Contractor.
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Plan.
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

II. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

- A. During the continuance of the Contract, Contractor will perform services necessary in connection with the Plan as outlined in the Contract. These services may include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined in 45 CFR §164.501. In connection with the services to be performed pursuant to the Contract, Contractor is permitted or required to use or disclose PHI it creates or receives for or from the Plan or to request PHI on the Plan’s behalf as provided below.
- B. Functions and Activities on the Plan’s Behalf. Unless otherwise limited in this BA Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Plan as specified in the Contract. Contractor may decide in its own reasonable discretion what

uses and disclosures of PHI are required for it to perform administrative services for the Plan as outlined in this BA Agreement and in the Contract as well as in accordance with the law.

1. Use for Contractor's Operations. Contractor may use PHI it creates or receives for or from the Plan for Contractor's proper management and administration or to carry out Contractor's legal responsibilities in connection with services to be provided under the Contract.
2. Disclosures for Contractor's Operations. Contractor may disclose the minimum necessary of such PHI for Contractor's proper management and administration or to carry out Contractor's legal responsibilities, but only if the following conditions are met:
 - a. The disclosure is required by law; or
 - b. Contractor obtains reasonable assurance, evidenced by written contract, from any person or organization to which Contractor will disclose such PHI that the person or organization will:
 - i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person or organization or as required by law; and
 - ii) Promptly notify Contractor (who will in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
3. Minimum Necessary Standard. In performing functions and activities in connection with the Contract, Contractor agrees to make reasonable efforts to use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.

D. Data Aggregation Services. The Plan agrees and recognizes that Contractor performs Data Aggregation services for the Plan, as defined by the HIPAA Rules. In the course of performing normal and customary services under the Contract, this data aggregation is an essential part of Contractor's work on behalf of the Plan under the Contract. Accordingly, Contractor can perform these data aggregation services in its own discretion, subject to any limitations imposed by the Contract. The term "Data Aggregation" is defined under the HIPAA Rules to mean, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a covered entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

D. Prohibition on Unauthorized Use or Disclosure

1. Non-permitted Use and Disclosure of PHI. Contractor will neither use nor disclose PHI it creates or receives for or from the Plan or from another Business Associate of the Plan, except as permitted or required by the Contract and this BA Agreement, as required by law, as otherwise permitted in writing by the Plan, or as authorized by a Covered Person.
2. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the Contract and this BA Agreement, Contractor will disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Plan. Other than disclosures permitted by this Section II or as otherwise specifically identified in the Contract, Contractor will not disclose Covered Persons' PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.

3. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons' PHI to Plan Sponsor, except as permitted by and in accordance with Section VII or as otherwise specifically identified in the Contract.

III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR

- A. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
- B. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BA Agreement.
- D. Contractor agrees to report to Covered Entity, without unreasonable delay and in any event within thirty (30) days, any use or disclosure of the PHI not provided for by this BA Agreement or otherwise in writing by the Plan. Contractor shall maintain a written log recording the date, name of Covered Person and description of PHI for all such unauthorized use or disclosure and shall submit such log to the Plan Sponsor semiannually and by request. Contractor agrees to directly provide notice to any effected participants in the event of a Breach and to send a written log each such Breach and notice to participants to the Covered Entity within thirty (30) days of notification. Contractor agrees to notify participants in accordance with the guidelines and standards set forth by the Department of Health and Human Services under the American Reinvestment & Recovery Act and the HITECH Act.
- D. Contractor will require that any agent, including a subcontractor, to whom it provides PHI as permitted by this BA Agreement (or as otherwise permitted with the Plan's prior written approval), agrees to the same restrictions and conditions that apply through this BA Agreement to Contractor with respect to such information.
- E. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.
- F. Contractor agrees to implement administrative, physical, and technical safeguards (as set forth in the Security Rule) that reasonably and appropriately protect the confidentiality and integrity (as set forth in the Security Rule), and the availability of Electronic PHI, if any, that Contractor creates, receives, maintains, or transmits electronically on behalf of Covered Entity. Contractor agrees to establish and maintain security measures sufficient to meet the safe harbor requirements established pursuant to ARRA by making data unreadable, indecipherable, and unusable upon receipt by an unauthorized person. Contractor agrees to provide adequate training to its staff concerning HIPAA and Contractors responsibilities under HIPAA.
- G. Contractor agrees to report to Covered Entity any Security Incident of which Contractor becomes aware.
- H. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such information.

IV. INDIVIDUAL RIGHTS OBLIGATIONS

- A. Access.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will provide access to PHI as required by 45 CFR §164.524 on the Plan's behalf. Contractor will provide such access according to its own procedures for such access. Contractor represents that its procedures for such access comply with the requirements of 45 CFR §164.524. Such provision of access will not relieve the Plan of any additional and independent obligations to provide access where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any PHI about the Covered Person created or received for or from the Plan in Contractor's custody or control contained in a Designated Record Set, so that the Plan may meet its access obligations under 45 CFR §164.524. All fees related to this access, as determined by Contractor, shall be borne by Covered Persons seeking access to PHI.
- B. Amendment.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will amend PHI as required by 45 CFR §164.526 on the Plan's behalf. Contractor will amend such PHI according to its own procedures for such amendment. Contractor represents that its procedures for such amendment comply with the requirements of 45 CFR §164.526. Such amendment will not relieve the Plan of any additional and independent obligations to amend PHI where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will amend such PHI contained in a Designated Record Set, in accordance with the requirements of 45 CFR §164.526. Upon receipt of written or electronic notice from the Plan, Contractor will amend or permit the Plan access to amend any portion of the PHI created or received for or from the Plan in Contractor's custody or control, so that the Plan may meet its amendment obligations under 45 CFR §164.526.
- D. Disclosure Accounting.** So that the Plan may meet its disclosure accounting obligations under 45 CFR §164.528, Contractor and the Plan agree that, wherever feasible and to the extent that disclosures have been made by Contractor, Contractor will provide the accounting that is required under 45 CFR §164.528 on the Plan's behalf. Contractor will provide such accounting according to its own procedures for such accounting. Contractor represents that its procedures for such accounting comply with the requirements of 45 CFR §164.528. Such provision of disclosure accounting will not relieve the Plan of any additional and independent obligations to provide disclosure accounting where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will provide an accounting as set forth below.

1. Disclosure Tracking

Starting as of the Effective Date of the Contract, Contractor will record each disclosure of Covered Persons' PHI, which is not exempted from disclosure accounting that Contractor makes to the Plan or to a third party.

The information about each disclosure that Contractor must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Contractor made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Covered Persons' PHI that Contractor makes for a single purpose to the same person or entity (including the Plan), Contractor may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. Exceptions from Disclosure Tracking

Contractor is not required to record disclosure information or otherwise account for disclosures of PHI that this BA Agreement or the Plan in writing permits or requires: (i) for the purpose of the Plan's payment activities or health care operations, (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented; (x) for disclosures prior to April 14, 2003; or (xi) as otherwise excepted under 45 CFR §164.528.

3. Disclosure Tracking Time Periods

Contractor will have available for the Plan or for Covered Persons the Disclosure Information required for the six (6) years immediately preceding the date of the Plan's request for the Disclosure Information (except Contractor will not be required to have Disclosure Information for disclosures occurring before April 14, 2003).

D. Right to Request Restrictions and Confidential Communications

So that the Plan may meet its obligations to evaluate requests for restrictions and confidential communications in connection with the disclosure of PHI under 45 CFR §164.522, Contractor and the Plan agree that, wherever feasible and to the extent that communications are within the control of Contractor, Contractor will perform these evaluations on behalf of the Plan. Contractor will evaluate such requests according to its own procedures for such requests, and shall implement such appropriate operational steps as are required by its own procedures. Contractor represents that its procedures for evaluating such requests comply with the requirements of 45 CFR §164.522. Such evaluation will not relieve the Plan of any additional and independent obligations to evaluate restrictions or implement confidential communications where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will evaluate requests for restrictions and requests for confidential communications, and will respond to these requests as appropriate under Contractor's procedures.

V. OBLIGATIONS OF THE COVERED ENTITY

- A. Covered Entity shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.
- B. Covered Entity shall notify Contractor of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- D. Covered Entity shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity except as provided in this BA Agreement. In no event shall Covered Entity request Contractor to disclose to Covered Entity or agents of Covered Entity any PHI unless such disclosure is the minimum necessary disclosure that satisfies the request and that such disclosure is solely for the purpose of treatment, payment or plan operations.

VI. BREACH OF PRIVACY OBLIGATIONS

Without limiting the rights of the parties under the Contract, the Plan will have the right to terminate the Contract if Contractor has engaged in a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations regarding PHI under this BA Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation.

If Contractor fails to cure the material breach or end the violation after the Plan's notice, the Plan may terminate the Contract by providing Contractor written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective sixty (60) days from this termination notice.

A. Effect of Termination.

1. Return or Destruction upon Contract End

Upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will if feasible return to the Plan or destroy all PHI, in whatever form or medium (including in any electronic medium under Contractor's custody or control), that Contractor created or received for or from the Plan, including all copies of such PHI that allow identification of any Covered Person who is a subject of the PHI. Contractor will complete such return or destruction as promptly as practical after the effective date of the cancellation, termination, expiration or other conclusion of the Contract.

Following notice, Contractor shall pay the costs incurred in returning or destroying such PHI unless Plan Sponsor agrees to reimburse Contractor for reasonable costs following good faith negotiation between Contractor and Plan Sponsor subject to the requisite appropriation by the Delaware General Assembly as required by Title 29 Delaware Code Chapter 65 and Article 8, Section III of the Delaware Constitution.

2. Disposition When Return or Destruction Not Feasible

The Plan recognizes that in many situations, particularly those involving data aggregation services performed by Contractor for the Plan and others, that it will be infeasible for Contractor to return or destroy PHI. Accordingly, where in Contractor's discretion such return or destruction is infeasible, for any such PHI, upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will limit its further use or disclosure of the PHI to those purposes that make their return to the Plan or destruction infeasible.

VII. PLAN SPONSOR'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS

A. Communication of PHI. Except as specifically agreed upon by Contractor, the Plan and Plan Sponsor, and in compliance with any requirements imposed by this Section VII, all disclosures of PHI from Contractor pursuant to the Contract shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.

B. Summary Health Information. Upon Plan Sponsor's written request for the purpose either to, (a) obtain premium bids for providing health insurance coverage for the Plan, or (b) modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.

D. Plan Sponsor Representation. Plan Sponsor represents and warrants (A) that the Plan has been established and is maintained pursuant to law, (B) that the Plan provides for the allocation and delegation of responsibilities for the Plan, including the responsibilities assigned to Contractor under the Contract, (C) that the Plan includes or incorporates by reference the appropriate terms

of the Contract and this BA Agreement, and (D) that the Plan incorporates the provisions required by 45 CFR §164.504.

- D. **Plan Sponsor's Certification**. Contractor will not disclose Covered Persons' PHI to Plan Sponsor, unless and until the Plan authorizes Contractor in writing to disclose the minimum necessary Covered Persons' PHI to Plan Sponsor for the plan administration functions to be performed by Plan Sponsor as specified in the Plan.
- E. **Contractor Reliance**. Contractor may rely on Plan Sponsor's certification and the Plan's written authorization, and will have no obligation to verify that the Plan complies with the requirements of 45 CFR §164.504 or this BA Agreement or that Plan Sponsor is complying with the Plan.
- F. **The Plan Amendment**. Before the Plan will furnish Plan Sponsor's certification described above to Contractor, the Plan will ensure (1) that its Plan establishes the uses and disclosures of Covered Persons' PHI consistent with the requirements of 45 CFR §164 that Plan Sponsor will be permitted and required to make for the plan administration functions Plan Sponsor will perform for the Plan, and (2) that Plan Sponsor agrees to all the applicable conditions imposed by §164.504 on the use or disclosure of PHI.

VIII. **MISCELLANEOUS**

- A. **Regulatory References**. A reference in this BA Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- B. **Survival**. The respective rights and obligations of Contractor under Section IV of this BA Agreement shall survive the termination of this BA Agreement.
- D. **Interpretation**. Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. Except to the extent specified by this BA Agreement, all of the terms and conditions of the Contract shall be and remain in full force and effect. In the event of any inconsistency or conflict between this BA Agreement and the Contract, the terms and provisions and conditions of this BA Agreement shall govern and control. Nothing express or implied in this BA Agreement and/or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. This BA Agreement shall be governed by and construed in accordance with the same internal laws that are applicable to the Contract.
- D. **Duration**. This BA Agreement will continue in full force and effect for as long as the Contract remains in full force and effect. This BA Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the Contract.
- E. **Term**. The Term of this BA Agreement shall be effective as of the date appearing on the signature page, and shall terminate when all of the PHI provided by Covered Entity to Contractor, or created or received by Contractor on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this BA Agreement.
- F. **Amendment**. Upon the effective date of any final regulation or amendment to final regulations with respect to the HIPAA Rules, this BA Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Contractor remain in compliance with such regulations, unless (1) Contractor elects to terminate the Contract by providing Plan Sponsor and the Plan notice of termination in accordance with the Contract at least thirty (30) days before the effective date of such final regulation or amendment to final regulations; or (2) Contractor notifies the Plan of its objections to any such amendment. In the event of such an objection, the parties will negotiate in good faith in connection with such changes or amendment to the relevant final regulation.

- G. **Conflicts.** The provisions of this BA Agreement will override and control any conflicting provision of the Contract. All nonconflicting provisions of the Contract will remain in full force and effect.
- H. **Independent Relationship.** None of the provisions of this BA Agreement are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent parties solely for the purposes of effecting the provisions of this BA Agreement and the Contract.
- I. **Rights of Third Parties.** This BA Agreement is between Contractor and the Plan and the Plan Sponsor and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- J. **Notices.** All notices and notifications under this BA Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Contractor, the Plan and Plan Sponsor at the addresses indicated on the signature page hereof, or such other address as a party may indicate by at least ten (10) days' prior written notice to the other parties. Notices will be effective upon receipt.
- K. **Expenses.** Unless otherwise stated in this BA Agreement or the Contract, each party shall bear its own costs and expenses related to compliance with the above provisions. Any additional expenses incurred by Contractor in connection with services to be provided pursuant to this BA Agreement shall be included in the Contract.
- L. **Documentation.** All documentation that is required by this BA Agreement or by the HIPAA Rules must be retained by Contractor for six (6) years from the date of creation or when it was last in effect, whichever is longer.

AGREED By and between the undersigned Parties this ____ day of _____ 20__.

For State of Delaware:

For Contractor:

By: _____
 Faith L. Rentz
 Director, Statewide Benefits Office

By: _____
 Printed Name: _____
 Title: _____

Address for Notices:

Address for Notices:

Statewide Benefits Office, DHR
 Attention: Ms. Faith L. Rentz, Director
 Enterprise Business Park
 97 Commerce Way, Suite 201
 Dover, DE 19904

APPENDIX J

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.

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU2	√	√	Data Usage	<p>PROVIDER will protect against any inappropriate use of State of Delaware information at all times. To this end, 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. PROVIDER may not use any personal 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> policy¹¹), 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>

¹¹ This includes Personal Health Information (PHI). See the data classification guide at <https://webfiles.dti.gov/pdfs/pp/dataclassificationguideline.pdf>

	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 post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement¹².</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 approved methods. The PROVIDER shall provide written certificates of destruction to the State of Delaware.¹³</p>

¹² A Service Level Agreement is defined as a contract.

¹³ A certificate form will be provided.

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU5		√	Data Location ¹⁴	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.

(Note: If the Cloud Services (CS) Terms also apply to this engagement, DU6, Breach Notification and Recovery, and DU7, Data Encryption, are duplicative of CS2 and CS3, respectively.)

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 5 (NON PUBLIC DATA)

PROVIDER Name/Address (*print*):

PROVIDER Authorizing Official Name (*print*):

PROVIDER Authorizing Official Signature: _____

Date: _____

¹⁴ If a call center or claims processing office, for example, is located offshore, the transmission of data via secured means that is approved by the State is acceptable. The policy can be found at: <https://webfiles.dti.gov/pdfs/pp/offshoreIStaffingpolicy.pdf>

APPENDIX K

PROFESSIONAL SERVICES AGREEMENT

Instructions: Use the “redline” feature for strikethroughs and insertions. If you make suggested changes, you must include a comment explaining the reason. The blanks for your company’s name do not need to be filled in at this time.

Items to note:

1. Section 1.1.1, Appendix A – Scope of Work: The Scope of Work will be added later for the specific services agreed upon in your bid response.
2. Section 1.2 – **Highlighted text** is non-negotiable.
3. Section 2.1 – As explained in the RFP, the first year of the contract is the portion of FY21 that remains after the start of the work, probably October 1, 2020, with the remaining years being full fiscal years.
4. Section 9 – **For both terms, be advised that the State cannot agree to major changes and will not, under any circumstances, accept the term of gross negligence.**

PROFESSIONAL SERVICES AGREEMENT

This Agreement (“Agreement”) is entered into as of _____, 20__ (“Effective Date”) by and between the State of Delaware (the “State”), Department of Human Resources (“DHR”), and _____, a _____ corporation, with offices at _____ (“Contractor”).

WHEREAS, the State desires to obtain audit services for contract compliance of the medical insurance plans and prescription drug program; and

WHEREAS, Contractor desires to provide such services to the State on the terms set forth below;

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

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

1. Services.

1.1 Contractor shall perform for the State the services specified in the Appendices to this Agreement, attached hereto and made a part hereof:

1.1.1 Appendix A – Scope of Work

1.1.2 Appendix B – Delaware Data Usage Terms and Conditions Agreement

1.1.3 Appendix C - Performance Guarantees

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); and (b) the State's Request for Proposals, dated _____, 20__ ("RFP"). Only the RFP is specifically incorporated into this Agreement, **not the Contractor's bid response**, and made a part hereof.

1.3 The State may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Contractor shall be furnished without the written authorization of the State. When the State desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Contractor, who shall then submit to the State a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Contractor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 Contractor will not be required to make changes to its scope of work that result in Contractor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from _____ through June 30, 2023, with the State having the option for up to two (2) one-year extensions (FY24, July 1, 2023 to June 30, 2024 and FY25, July 1, 2024 to July 1, 2025).

2.4 The State will pay Contractor for the performance of services described in Appendix A, Scope of Work. The fee will not exceed the fixed fee amount of \$ _____ and will be paid in accordance with the schedule as follows:

Medical Program

Conclusion of On-Site Review	1/3 of total fee
Delivery of the Draft Audit Report	1/3 of total fee
Delivery of the Final Audit Report	1/3 of total fee

Prescription Program

Delivery of the Draft Audit Report	1/2 of total fee
Delivery of the Final Audit Report	1/2 of total fee

It is expressly understood that the work defined in the appendices to this Agreement must be completed by Contractor and it shall be Contractor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. The State's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in the State's purchase order(s) to Contractor.

2.5 Contractor shall submit monthly invoices to the State in sufficient detail to support the services provided during the previous month. The State agrees to pay those invoices within thirty (30) days of receipt. In the event the State disputes a portion of an invoice, the State agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Contractor a detailed statement of the State's position on the disputed portion of the invoice within thirty (30) days of receipt. The State's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Contractor to charge interest on the overdue portion at the rate of 0.5% per month.

2.7 Unless provide otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Contractor.

2.8 Any payments made by the State of Delaware will be by Automated Clearing House (ACH) as per its ACH processing procedures.

2.9 The State is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.10 The State shall subtract from any payment made to Contractor all damages, costs and expenses caused by Contractor's negligence, resulting from or arising out of errors or omissions in Contractor's work products, which have not been previously paid to Contractor.

2.11 Invoices shall be submitted to:

State of Delaware
Department of Human Resources
Financial Operations, Suite 101
122 Martin Luther King, Jr., Blvd., South
Dover, DE 19901

3. Responsibilities of Contractor.

3.1 Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Contractor shall follow practices consistent with generally accepted professional and technical standards. Contractor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the requirements of the RFP and the standards of the DHR. Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's failure to ensure compliance with RFP requirements and DHR standards.

3.2 It shall be the duty of the Contractor to assure that all products and services are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Contractor will not produce a work product that violates or infringes on any copyright or patent rights. Contractor shall, without additional compensation, correct or revise any errors or omissions in its work products and services.

3.3 Permitted or required approval by the State of any products or services furnished by Contractor shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of Contractor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's performance or failure to perform under this Agreement.

3.4 Contractor shall furnish to the State's designated representative copies of all correspondence to regulatory agencies that apply to services or products subject of this contract.

3.5 Contractor agrees that its officers and employees will cooperate with the State in the performance of services under this Agreement and will be available for consultation with the State at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.6 Contractor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State or any other political subdivision of the State.

3.7 Contractor will not use the State's name, logo or seal either express or implied, in any of its advertising or sales materials without the State's express written consent.

3.8 Contractor will not use the names, home addresses or any other information obtained about the participants for offering for sale any property or services that are not directly related to the services contracted herein without express written consent of the State.

3.9 The State reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, if awarded, the work performed, or any reference to the State with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State.

3.10 The rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

3.11 Contractor shall provide a written report no later than forty-five (45) days following the close of each quarter which shall describe any judgment or settlement or pending litigation involving Contractor that could result in judgments or settlements in excess of One Hundred Thousand Dollars (\$100,000). Alternatively, if your company is publicly traded, you may provide the website of the SEC 10-Q and 10-K filing.

3.12 The Contractor must affirm 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 currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

3.13 Monthly Value/Usage Reports – The Contractor is required to accurately report the administrative fees paid monthly by the State. The Statewide Benefits Office will file the reports on the Contractor's behalf.

3.14 Second Tier Spending Report - In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. All contractors are required to accurately report on the participation by Diversity Suppliers. You will be asked for this information on a quarterly basis and the SBO will submit this report on your behalf.

3.15 An activity central to the Scope of Services cannot take place at a physical location outside of the United States. Only support activities may be performed at satellite facilities such as a foreign office or division. Subcontractors are also subject to this provision.

4. Time Schedule.

4.1 Any delay of services or change in sequence of tasks must be approved in writing by the State.

4.2 In the event that Contractor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by the State, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, the State may suspend the payments scheduled herein.

4.3 Contractor will provide the State with renewal information and/or proposed contract amendments at least 180 days prior to the renewal anniversary. Significant changes that could negatively impact employees/participants may only take effect annually on the anniversary of the plan effective date or as permissible under State and federal law. Such changes must be communicated in writing with a sixty (60) days' written notice to employees and ninety (90) days' notice to the Statewide Benefit Office.

5. State Responsibilities.

5.1 In connection with Contractor's provision of the Services, the State shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 The State agrees that its officers and employees will cooperate with Contractor in the performance of services under this Agreement and will be available for consultation with Contractor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Contractor under this Agreement shall be subject to review for compliance with the terms of this Agreement by the State's designated representatives. The State representatives may delegate any or all responsibilities under the Agreement to appropriate staff members. The review comments of the State's designated representatives may be reported in writing as needed to Contractor. It is understood that the State's representatives' review comments do not relieve Contractor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Contractor for the State relating to the services to be performed hereunder shall become the property of the State and shall be delivered to the State's designated representative upon completion or termination of this Agreement, whichever comes first. Contractor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by the State. The State shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Contractor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* §10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 Contractor warrants that its services will be performed in a good and workmanlike manner. Contractor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Contractor for the State in connection with the provision of the Services, Contractor shall pass through or assign to the State

the rights Contractor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification.

9.1 Contractor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Contractor shall have been notified in writing by the State of any notice of such claim; and (ii) Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

The State shall not indemnify the Vendor in the contract awarded under this RFP or any related contract. Vendor shall not request the State to indemnify or provide quasi-indemnification under any contract. An example of an unacceptable quasi-indemnification provision is:

The State asserting it is without legal authority to agree to such indemnification, acknowledge that Vendor, on behalf of itself and any affiliate, reserves such rights as it may have to obtain reasonable compensation from the State, against any loss, damage, costs of suit or other expenses resulting from the improper use or disclosure of data or any breach of this Agreement by State.

9.2 Contractor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of any data security breaches/ or incidents (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Contractor shall have been notified in writing by the State of any notice of such claim; and (ii) Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

10. Employees.

10.1 Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor the State's request for specific individuals that are assigned to managerial roles in all areas of account management.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save the State harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature

whatsoever. Contractor shall maintain insurance that will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract.

11.2 Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The State will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the State or any of its officers, employees or other agents.

11.3 Contractor shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, Contractor has no authority to bind or commit the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, and fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

The State may suspend performance by Contractor under this Agreement for such period of time as the State, at its sole discretion, may prescribe by providing written notice to Contractor at least fifteen (15) days prior to the date on which the State wishes to suspend. Upon such suspension, the State shall pay Contractor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Contractor shall not perform further work under this Agreement after the effective date of suspension. Contractor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from the State to resume performance.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by the State for convenience or in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given notice as follows:

- a. Not less than 180 days written notice by the State for convenience.
- b. Not less than 180 days written notice by the Contractor for cause.
- c. Not less than 30 days written notice by the State for cause.

13.2 If termination for default is affected by the State, the State will pay Contractor that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the State by reason of Contractor's default.

13.3 If after termination for failure of Contractor to fulfill contractual obligations it is determined that Contractor has not so failed, the termination shall be deemed to have been affected for the convenience of the State.

13.4 The rights and remedies of the State and Contractor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.5 Gratuities.

13.5.1 The State may, by written notice to Contractor, terminate this Agreement if it is found after notice and hearing by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.5.2 In the event this Agreement is terminated as provided in Section 13.5.1 hereof, the State shall be entitled to pursue the same remedies against Contractor it could pursue in the event of a breach of this Agreement by Contractor.

13.5.3 The rights and remedies of the State provided in Section 13.5 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by Contractor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the State shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by Contractor without prior written approval of the State.

15.3 Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under this Agreement by Contractor, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by the State's approval of the Contractor's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the State may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the State's obligations under it shall be extinguished at the end of the fiscal year in which the State fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Contractor and all subcontractors represent that they are properly licensed and authorized to transact business in the State as provided in 30 *Del. C.* §2502.

19. Complete Agreement.

19.1 This Agreement and its Appendices shall constitute the entire agreement between the State and Contractor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this Agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

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

19.3 Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Contractor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Contractor acknowledges that the State has an obligation to ensure that public funds are not used to subsidize private discrimination. Contractor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the State may declare Contractor in breach of the Agreement, terminate the Agreement, and designate Contractor as non-responsible.

20.6 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 Contractor shall maintain all public records, as defined by 29 *Del. C.* §10002(1), relating to this Agreement and its deliverables for the time and in the manner specified by the State Division of Archives, pursuant to the State Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of the State may inspect or audit Contractor' performance and records pertaining to this Agreement at the Contractor business office during normal business hours.

21. Insurance.

21.1 Contractor shall maintain the following insurance during the term of this Agreement:

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law; and
- b. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; and
- c. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; and/or
- d. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence.

21.2. Contractor shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4. Within thirty (30) days of renewal, Contractor will provide the State a copy of renewal certificates throughout the term of the Agreement.

21.5. In **NO** event shall the State be named as an additional insured on any policy required under this Agreement.

21.6. Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, Contractor hereby grants, conveys, sells, assigns, and transfers to the State all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. Applicable Law

23.1 The laws of the State of Delaware shall apply, except where Federal Law has precedence. Contractor consents to jurisdiction and venue in the State of Delaware.

23.2 Contractor certifies that it complies with all federal, state and local laws applicable to its activities and obligations including:

- a. the laws of the State of Delaware;
- b. the applicable portion of the Federal Civil Rights Act of 1964;
- c. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- d. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- e. 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.

23.3 If Contractor fails to comply with (a) through (e) of this paragraph, the State reserves the right to terminate the contract or consider the Contractor in default.

23.4 Contractor 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.

24. Notices.

Any notice required pursuant to this Agreement shall be in writing and shall be effectively served: (a) if delivered personally, upon receipt by the other Party; (b) if sent by prepaid courier service, certified or registered mail, upon date indicated on the return receipt requested; or (c) if sent by facsimile or electronic mail (with confirmed receipt), upon receipt of transmission notice by the sender. All notices shall be sent to the following addresses:

TO **State** at:
State of Delaware, DHR
Statewide Benefits Office
ATTN: Contract Manager or Director
97 Commerce Way, Suite 201
Dover, DE 19904

TO **Contractor** at:

(insert)

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES**

By: _____
Faith L. Rentz, Director
Statewide Benefits Office

Date: _____

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____