



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 ¹ shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.
DU2	✓	✓	Data Usage	<p>PROVIDER 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> policy²), 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>

¹ Provider is the contractor, company or vendor as defined in the contract.

² This includes Personal Health Information (PHI): <https://webfiles.dti.gov/pdfs/pp/dataclassificationguideline.pdf>



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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 entirety³:</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><i>Post-Termination Assistance:</i> 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 Agreement⁴.</p>

³ The State acknowledges that the ninety (90) day requirement is not applicable to insurance products. That timeframe is replaced with the following: Service Provider will retain the data for business processing reasons, such as claims run-out for twelve (12) months or until federal regulatory or Delaware Insurance Code requirements have been satisfied. The State of Delaware acknowledges that, pursuant to 42 CFR 423.505, the Center for Medicare Services (“CMS”) requires retention for the current year plus ten (10) years. Additionally, there is an audit period requirement by the State’s Department of Insurance that may apply if a retention period for CMS doesn’t apply to this engagement.

⁴ A Service Level Agreement is defined as a contract.



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	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU4		<input checked="" type="checkbox"/>	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.⁵</p>
DU5		<input checked="" type="checkbox"/>	Data Location⁶	<p>The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.</p>

⁵ A certificate form can be provided.

⁶ 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/offshoreITstaffingpolicy.pdf>



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DU6		√	Breach Notification and Recovery	<p>The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (<i>see CS 3, below</i>), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy⁷) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years⁸, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.</p>

⁷ This includes Personal Health Information (PHI): <https://webfiles.dti.gov/pdfs/pp/dataclassificationguideline.pdf>

⁸ A minimum of three years is non-negotiable.



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DU7		✓	Data Encryption	The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. ⁹ For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this nonpublic data at rest. The PROVIDER’s encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware’s standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy. ¹⁰

(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.)

⁹ For the requirements for secure email transmission, please see <http://dti.delaware.gov/pdfs/pp/SecureEmail.pdf>. It is the State’s preference that confidential data will not be accessed on mobile devices. If so, for the requirements please see <http://dti.delaware.gov/pdfs/pp/MobileDeviceEncryptionStandard.pdf>.

¹⁰ See the policy at: <https://webfiles.dti.delaware.gov/pdfs/pp/Terms%20and%20Conditions%20Governing%20Cloud%20Services%20Policy.pdf>
 Records are defined as the number of covered members.



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

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

FOR OFFICIAL USE ONLY **DU 1 - DU 3 (PUBLIC DATA ONLY)** or **DU 1 - DU 5 (NON PUBLIC DATA)**

PROVIDER Name/Address (*print*): _____

PROVIDER Authorizing Official Name (*print*): _____

PROVIDER Authorizing Official Signature: _____ Date: _____