

Karen Weldin Stewart, CIR-ML  
Commissioner



Delaware Department of Insurance

October 10, 2016

Cheryl Scanlon-Zinner, CSP, President  
Scanlon Safety Services, LLC  
2516 Channin Drive  
Wilmington, Delaware 19810

**RE: RFP DOI16003-WRKPL\_INSP**

Dear Ms. Scanlon-Zinner:

The Department of Insurance (the "Department") has completed the evaluation of proposals submitted in response to RFP DOI15003-WRKPL\_INSP. Based on the outcome of the evaluation process, the Department is pleased to inform you that Scanlon Safety Services, LLC, has been selected as a vendor for this project, and the Department wishes to begin contract negotiations with you as soon as possible. We will be contacting you shortly with information about the next steps. Please be advised that you may not begin working on this matter until you have a signed contract and purchase order in hand.

Thank you for your interest in working with the Department. We look forward to successful contract negotiations. If you have any questions, please contact me at (302) 674-7300.

Sincerely,  
Signature on File

Paul Reynolds, Chief of Staff  
Delaware Department of Insurance

## PROFESSIONAL SERVICES AGREEMENT

This Agreement (the "Agreement") is entered into as of October 15, 2016 (the "Effective Date") and will end on October 15, 2019, by and between the State of Delaware, Department of Insurance ("Delaware"), and Scanlon Safety Services, LLC ("Scanlon Safety"), a Delaware Corporation, with headquarters located at 2516 Channin Drive, Wilmington, Delaware 19810.

WHEREAS, Delaware desires to obtain certain services to help assess, study, identify, develop and implement enhancements and make recommendations to Delaware's established health rate review program.

WHEREAS, Scanlon Safety desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Scanlon Safety 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, Delaware and Scanlon Safety agree as follows:

### 1. Services.

1.1. Scanlon Safety shall perform for Delaware the services specified in the Appendices to this Agreement attached hereto and made a part hereof.

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); (b) Delaware's request for proposal, attached hereto as Appendix A; and (c) Scanlon Safety's response to the request for proposal, attached hereto as Appendix B. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3. Delaware may, at any time, in writing, 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 Scanlon Safety shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Scanlon Safety, who shall then submit to Delaware 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 Scanlon Safety for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4. Scanlon Safety will not be required to make changes to its scope of work that result in its 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 October 15, 2016 through October 15, 2019 with two (2) optional extensions for a period of one (1) year each, by written agreement.

2.2. Delaware will pay Scanlon Safety for the performance of services described in Appendix C, Scope of Services. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D.

2.3. It is expressly understood that the work defined in Appendix C to this Agreement must be completed by Scanlon Safety and it shall be Scanlon Safety's responsibility to ensure that tasks are properly budgeted so that all services are completed for the agreed upon fees as set forth in Appendix D. DOI'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 Delaware's purchase order(s) to Scanlon Safety.

2.4. Scanlon Safety shall submit timely invoices to Delaware in sufficient detail to support the services provided. See Appendix B. Delaware agrees to pay those invoices within thirty (30) business days of *receipt*. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) business days of receipt and to provide Scanlon Safety a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) business days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) business days of receipt shall entitle Scanlon Safety to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to Scanlon Safety Services, LLC at 2516 Channin Drive, Wilmington, Delaware 19810.

2.5. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Scanlon Safety.

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

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

### **3. Responsibilities of SCANLON SAFETY.**

3.1. SCANLON SAFETY shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by SCANLON SAFETY, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, SCANLON SAFETY shall follow practices consistent with generally accepted professional and technical standards. SCANLON SAFETY shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, SCANLON SAFETY shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. SCANLON SAFETY shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by SCANLON SAFETY's failure to ensure compliance with DTI standards.

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

3.3. Permitted or required approval by Delaware of any products or services furnished by SCANLON SAFETY shall not in any way relieve SCANLON SAFETY of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of SCANLON SAFETY'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 SCANLON SAFETY shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by SCANLON SAFETY's performance or failure to perform under this Agreement.

3.4. SCANLON SAFETY shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by SCANLON SAFETY's associates and employees under the personal supervision of the Project Manager.

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

3.6. SCANLON SAFETY 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 of Delaware or any other political subdivision of Delaware.

3.7. SCANLON SAFETY will not use the State of Delaware or DOI's name, either express or implied, in any of its advertising or sales materials without express written consent.

3.8. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Time Schedule.**

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

4.2. In the event that SCANLON SAFETY fails to complete any inspection(s) within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, 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, Delaware shall suspend the payments scheduled as set forth in Appendix A.

#### **5. State Responsibilities.**

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

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

5.3. The services performed by SCANLON SAFETY under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform SCANLON SAFETY by written notice before the effective date of each such delegation.

5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to SCANLON SAFETY. It is understood that Delaware's representatives' review comments do not relieve SCANLON SAFETY from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5. Delaware shall, without charge, furnish to or make available for examination or use by SCANLON SAFETY as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

SCANLON SAFETY shall return any original data provided by Delaware.

5.6. Delaware shall assist SCANLON SAFETY in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7. SCANLON SAFETY will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8. Delaware agrees not to use SCANLON SAFETY's name, either express or implied, in any of its advertising or sales materials. SCANLON SAFETY reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

## **6. Work Product.**

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

6.2. SCANLON SAFETY retains all title and interest to any data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the services provided. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which SCANLON SAFETY retains title, whether individually by SCANLON SAFETY or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3. In no event shall SCANLON SAFETY be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, SCANLON SAFETY 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.

6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by SCANLON SAFETY prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of SCANLON SAFETY even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **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. SCANLON SAFETY warrants that its services will be performed in a good and workmanlike manner. SCANLON SAFETY 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 SCANLON SAFETY for Delaware in connection with the provision of the Services, SCANLON SAFETY shall pass through or assign to Delaware the rights SCANLON SAFETY 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; Limitation of Liability.**

9.1. SCANLON SAFETY shall indemnify and hold harmless Delaware and the State of Delaware, 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 SCANLON SAFETY, its agents or employees, or
  - b. SCANLON SAFETY'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. SCANLON SAFETY shall have been notified promptly in writing by Delaware of any notice of such claim; and
    - ii. SCANLON SAFETY shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.
- 9.2. If Delaware promptly notifies SCANLON SAFETY in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, SCANLON SAFETY will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware or the State of Delaware. SCANLON SAFETY will not indemnify Delaware or the State of Delaware, however, if the claim of infringement is caused by:
- a. Delaware's misuse or modification of the Deliverable;
  - b. Delaware's failure to use corrections or enhancements made available by SCANLON SAFETY;
  - c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by SCANLON SAFETY;
  - d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
  - e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in SCANLON SAFETY's opinion is likely to be, held to be infringing, SCANLON SAFETY shall at its expense and option either
    - i. Procure the right for Delaware to continue using it,
    - ii. Replace it with a non-infringing equivalent,
    - iii. Modify it to make it non-infringing.

The foregoing remedies constitute Delaware's sole and exclusive remedies and SCANLON SAFETY's entire liability with respect to infringement.

- 9.3. Delaware agrees that SCANLON SAFETY's total liability to Delaware and the State of Delaware for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or SCANLON SAFETY negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to SCANLON SAFETY.

In no event shall SCANLON SAFETY be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if SCANLON SAFETY has been advised of the likelihood of such damages.

#### **10. Employees.**

- 10.1. SCANLON SAFETY has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by SCANLON SAFETY in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- 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, 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.
- 10.3. Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of SCANLON SAFETY who will be assigned to this project.

#### **11. Independent Contractor.**

- 11.1. It is understood that in the performance of the services herein provided for, SCANLON SAFETY shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. SCANLON SAFETY shall be solely responsible for, and shall indemnify, defend and save Delaware 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.
- 11.2. SCANLON SAFETY acknowledges that SCANLON SAFETY and any subcontractors, agents or employees employed by SCANLON SAFETY shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.
- 11.3. SCANLON SAFETY shall be responsible for providing liability insurance for its personnel.
- 11.4. As an independent contractor, SCANLON SAFETY has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.



## **12. Suspension.**

- 12.1. Delaware may suspend performance by SCANLON SAFETY under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to SCANLON SAFETY at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay SCANLON SAFETY its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. SCANLON SAFETY shall not perform further work under this Agreement after the effective date of suspension. SCANLON SAFETY shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.
- 12.2. In the event Delaware suspends performance by SCANLON SAFETY for any cause other than the error or omission of the SCANLON SAFETY, for an aggregate period in excess of 30 days, SCANLON SAFETY shall be entitled to an equitable adjustment of the compensation payable to SCANLON SAFETY under this Agreement to reimburse SCANLON SAFETY for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

## **13. Termination.**

- 13.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
  - a. Not less than 30 calendar days written notice of intent to terminate; and
  - b. An opportunity for consultation with the terminating party prior to termination.
- 13.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after SCANLON SAFETY is given:
  - a. Not less than 30 calendar days written notice of intent to terminate; and
  - b. An opportunity for consultation with Delaware prior to termination.
- 13.3. If termination for default is effected by Delaware, Delaware will pay SCANLON SAFETY 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 SCANLON SAFETY at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of SCANLON SAFETY's default.
  - c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event SCANLON SAFETY shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of SCANLON SAFETY assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4. If after termination for failure of SCANLON SAFETY to fulfill contractual obligations it is determined that SCANLON SAFETY has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5. The rights and remedies of Delaware and SCANLON SAFETY provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6. Gratuities.

- a. Delaware may, by written notice to SCANLON SAFETY, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by SCANLON SAFETY or any agent or representative of SCANLON SAFETY to any officer or employee of Delaware 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.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against SCANLON SAFETY it could pursue in the event of a breach of this Agreement by SCANLON SAFETY.
- c. The rights and remedies of Delaware provided in Section 13.6 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 SCANLON SAFETY to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2. Services specified by this Agreement shall not be subcontracted by SCANLON SAFETY, without prior written approval of Delaware.

15.3. Approval by Delaware of SCANLON SAFETY's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve SCANLON SAFETY 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. SCANLON SAFETY shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by SCANLON SAFETY, its subcontractor or its sub-subcontractor.

15.5. The compensation due shall not be affected by Delaware's approval of the SCANLON SAFETY'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 Delaware 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 Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware 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.**

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

**19. Complete Agreement.**

19.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and SCANLON SAFETY 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. SCANLON SAFETY may not order any product requiring a purchase order prior to Delaware's issuance of such order. 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, SCANLON SAFETY shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. SCANLON SAFETY 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. SCANLON SAFETY 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. SCANLON SAFETY 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. SCANLON SAFETY acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. SCANLON SAFETY 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, Delaware may declare SCANLON SAFETY in breach of the Agreement, terminate the Agreement, and designate SCANLON SAFETY as non-responsible.
- 20.6. SCANLON SAFETY 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, Delaware 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. SCANLON SAFETY shall maintain all public records, as defined by 29 *Del. C.* §502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit SCANLON SAFETY's performance and records pertaining to this Agreement at the SCANLON SAFETY business office during normal business hours.

## **21. Insurance.**

21.1. SCANLON SAFETY 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,
- b. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence,
- c. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; OR
- d. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence.

21.2. SCANLON SAFETY 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 and copies shall be provided to the DOI.

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

## **22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, SCANLON SAFETY hereby grants, conveys, sells, assigns, and transfers to Delaware 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 of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

## **23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. SCANLON SAFETY consents to jurisdiction venue in the State of Delaware.

24. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

DELAWARE:

Delaware Department of Insurance  
Michael Gould  
841 Silver Lake Boulevard  
Dover, DE 19904

VENDOR:

Scanlon Safety Services, LLC  
Cheryl Scanlon-Zinner CSP  
2516 Channin Drive  
Wilmington, DE 19810

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 INSURANCE

Signature on File

Signature on File

Witness

Name

CHIEF OF STAFF

Title

Date

10/14/16

Signature on File

SCANLON SAFETY SERVICES, LLC

Signature on File

Witness

Name

Cheryl Scanlon-Zinner

Title

President

## **APPENDIX A**

### **RFP**

## **APPENDIX B**

### **RESPONSE TO RFP**



## APPENDIX C SCOPE OF WORK

Inspectors shall be responsible to provide the following services:

Conduct safety inspections in accordance with Regulation 802 (<http://regulations.delaware.gov/AdminCode/title18/800/802.shtml#TopOfPage>).

Specifically, all inspections must include a physical walk-through of the premises to be inspected as well as a thorough review of the following items, which are to be maintained by the employer and made available for the inspector to review:

- Any workplace injuries that have occurred within the three years prior to the application.
- The outcome of those injuries, including specific details of the injuries.
- Confirmation of Modification Duty Availability Reports for all injuries, as applicable.
- Any findings or fines relating to workplace safety resulting from the injuries.
- A list of possible assignments for injured workers.
- Any safety measures taken by the employer as a result of the injuries.

Provide the DOI with a report and a statement of recommendation based on the physical walk-through and the above information as to whether or not the employer should receive the workplace safety credit. The inspectors shall have 30-45 business days to conduct the inspection from the date of assignment.

Supply the Department of Insurance with invoices within ten (10) business days of completing the inspection for the work done in accordance with the procedures required by the Department.

## **APPENDIX D**

### **PRICING SCHEDULE**

## **APPENDIX E**

### **PAYMENT SCHEDULE**

Scanlon Safety shall submit invoices by mail to the Workplace Safety Program Office, Delaware Department of Insurance at 841 Silver Lake Boulevard, Dover, Delaware 19904 – 2465.

The invoice will include an itemization of services and activities performed consistent with the Scope of Services (Appendix C) and the Payment Schedule (Appendix D).

Payment will be made within 30 business days following receipt of the invoice and approval by the DOI.

NOTE: See Contract Sections 2.3 and 2.4 for further reference.

Company Website: [www.scanlonsafety.com](http://www.scanlonsafety.com)

Primary Contact Name: Cheryl Scanlon-Zinner

Phone Number: 302-529-7718

Secondary Phone Number: 215-605-6348

Fax Number: N/A

Cell Number: 215-605-6348

Email Address: Cheryl@scanlonsafety.com

Secondary Contact Name: Ira Zinner

Phone Number: 215-457-7533

Secondary Phone Number: 215-651-0482

Fax Number: 215-457-7544

Cell Number: 215-651-0482

Email Address: the\_zinners@yahoo.com

M/WBE (Minority and Women Businesses) Certified ☒ Yes ☐ No

Delaware Vendor ☒ Yes ☐ No

Vets/DV Certified Yes ☒ No