State of Delaware
Office of Management & Budget
Statewide Benefits Office

STATE EMPLOYEE BENEFITS COMMITTEE

Request for Proposal
Cost Control and Program Integrity Review

RFP Release Date – November 23, 2015

Intent to Bid Deadline – December 1, 2015, noon Local Time

Deadline for Questions Due – December 7, 2015, noon Local Time

Responses to Questions – December 11, 2015

Proposals Due – December 18, by 1:00 PM Local Time

OMBXXX-12345

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1. File Layouts for PHRST (State) and Pension Office
2. Vendor Usage and 2nd Tier Spending Reports

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 plans and the prescription drug programs that provide benefits to approximately 66,000 active employees and pensioners of the State of Delaware, participating non-State group members, and their dependents.

For complete information about the State's benefit programs, please go to http://ben.omb.delaware.gov/

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:	**On or about January 22, 2016**
Intent to Bid Due[1]:	**Tuesday, December 1, by noon Local Time**
Follow-up Questions Due:	**Thursday, December 7, 2015, by noon Local Time**
Proposal Submissions Due:	**Friday, December 18, 2015, by 1:00 PM Local Time**

A. Background and Overview

Organization Description

The SEBC is chaired by the Director of the Office of Management and Budget (OMB). The Committee is comprised of the Insurance Commissioner, the Chief Justice of the Supreme Court, the State Treasurer, the Director of the Office of Management and Budget, the Controller General, the Secretary of Finance, the Secretary of Health and Social Services, the Lieutenant Governor, and the President of the Correctional Officers Association of Delaware or their designees. The Statewide Benefits Office (SBO) is a division within the OMB. The SBO 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, dental, vision, disability, life, flexible spending accounts, wellness and disease management programs, pre-tax commuter benefits and supplemental benefits (accident and critical illness). Visit http://ben.omb.delaware.gov for

[1] IMPORTANT: Your bid will not be accepted if the State of Delaware does not receive an email or written confirmation of an Intent to Bid. See Section II.B.3 for details.

information about the programs. The SEBC controls and manages benefits for approximately 37,000 active employees, approximately 29,000 retirees, as well as 8,700 non-State employees, and their dependents.

The chart below provides the average number of contracts and participants in each of the State's plans for Fiscal Year 2015. All plans includes prescription drug coverage.

Highmark BCBS Delaware	**Incurred Claims & Expenses**	**Average Members**
Basic Active	$3,605,426	1,431
Basic Non Medicare Retirees	$991,754	142
PPO Active	$229,214,482	45,875
PPO Non Medicare Retirees	$47,097,925	5,487
CDH Active	$8,766,605	2,578
CDH Non Medicare Retirees	$986,407	145
Medicare Primary Retirees	$46,178,511	23,288
Blue Care HMO Active	$126,380,082	30,861
Blue Care HMO Non Medicare Retirees	$24,225,313	3,054
POS	$3,328,371	538
Grand Total Highmark	**$490,774,877**	**113,399**
Aetna	**Incurred Claims & Expenses**	**Average Members**
HMO Active	$24,826,898	6,264
HMO Non Medicare Retirees	$4,733,979	839
CDH Active	$1,679,307	688
CDH Non Medicare Retirees	$155,271	36
Grand Total Aetna	**$31,395,455**	**7,827**
Express Scripts	**Incurred Claims & Expenses**	**Average Members**
Highmark Participants	$167,893,518	113,399
Aetna Participants	$8,445,059	7,827
Grand Total Aetna	**$176,338,577**	**121,226**

B. Proposal Objectives

The SEBC desires to contract with an 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.

C. Scope of Services

You may submit a proposal on Part 1 (Medical Programs) and/or Part 2 (Prescription Programs). The selected organization (s) is required to provide the following services

Part 1 – Medical Plans

The Contractor shall provide contract compliance review services for three one year periods

i) July 1, 2012 – June 30, 2013 (FY13)

ii) July 1, 2013 – June 30, 2014 (FY14)

iii) July 1, 2014 – June 30, 2015 (FY15)

- **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)
  - Special programs such as limits and coinsurances on In-Vitro Fertilization
  - 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
- **Clinical Review** tasks should expand the Operational Review tasks listed above. This review should focus on medical management and/or condition/disease management to determine:
  - If employer sponsored programs integrated within medical plan are providing appropriate, effective, and efficient clinical management;
  - If the vendor partner is adhering to best practice operational and clinical guidelines;
  - If the program is demonstrating expected or guaranteed program outcomes;
  - If the vendor is successfully reaching members and achieving successful program participation.
- **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
  - 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
  - Special programs such as limits and coinsurances on In-Vitro Fertilization

- A **Target Claims Selection** is expected to validate the electronic query results.
- A **Statistically Valid Claim Sample** should present a 95% confidence level that the contract compliance review findings are a true representation of how all claims were processed within the identified period. The proposal should clearly indicate the confidence parameters and application to financial and/or incidence reporting. Each statistical claim sample is to be reviewed from receipt through each step of processing to verify:
  - 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
- 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.
- summary comments and recommendations for each plan regarding improving plan design to insure that the State receives high quality services in a cost effective, timely manner.

Part 2 – Prescription Drug Program

The Contractor shall provide contract compliance review service, with two aspects, for six one-year periods

i) Commercial Plan (Active employees and Retirees not eligible for Medicare)

(1) July 1, 2012 – June 30, 2013 (FiscalYear13)

(2) July 1, 2013 – June 30, 2014 (FY14)

(3) July 1, 2014 – June 30, 2015 (FY15)

ii) Employer Group Waiver Program (Retirees eligible for Medicare)

(1) January 1, 2013 – December 31, 2013 (PlanYear13)

(2) January 1, 2014 – December 31, 2014 (PY14)

(3) January 1, 2015 – December 31, 2015 (PY15)

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. 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., 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
  - 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 (100%) prescription transactions (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
- Duplicate claims
- Coverage rules
- 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
  - 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
  - summary comments and recommendations for each plan regarding improving plan design to insure 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	11/23/2105
Intent to Bid Deadline [2]	12/1/2015, noon Local Time
Questions Due from Confirmed Bidders	12/7/2015, noon Local Time
Responses to Questions	12/11/2015
Deadline for Bids	12/18/2015, 1:00 PM Local Time
Notification of Finalists - Invitation to Interview	Week of 01/04/16
Finalist Interviews [3]	Week of 01/11/2016
Contract Award	January 2016
Final Report Due	6/26/2016

E. Evaluation Process

Proposal Review Committee

The Proposal Review Committee (PRC) will review all proposals submitted in response to the RFP. The PRC may be comprised of representatives from a subset of the following offices:

- Office of Management and Budget
- Controller General's Office
- Department of Finance

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

[3] The SEBC will require each of the finalists to make a presentation in Dover, Delaware, at the expense of the proposing firm. In addition to communicating your organization's capabilities to fulfill the requirements in the RFP, the presentation will require discussion regarding customer service and account management on-line functions. Because the finalist notifications may go out as late as a week or two beforehand, SAVE THE DATE of Tuesday, September 1, 2015.

- 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
- President of the Correctional Officers Association of Delaware

The PRC 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 outlined 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 proposing firm's ability to meet the Technology and Data Requirements in Section V are also considered a minimum requirement.

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 successful 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 or award to multiple vendors. The SEBC also reserves the right to award to multiple vendors, however, it is the SEBC's intention to award the contract to one vendor.

Evaluation Criteria

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the PRC to evaluate proposals:

Topic and Weighting	Description
Contract Compliance Review Plan – 20%	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
Professional Staff Expertise - 20%	The experience and qualifications of each member of the staff providing the review services will be evaluated.
Contract Management Plan – 10%	The bidder's plan for managing the review timelines required by this proposal will be evaluated.
Experience – 20%	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 Agency may review and compare a fixed rate offering compared to the pro-offered alternative, retainage offering. Final selection of the pricing to be negotiated and accepted will be subject to the best interest of the state.

The SEBC will use the information contained in your proposal to determine whether you will be selected as a finalist and for contract negotiations. The proposal the SEBC selects will be a working document. As such, the SEBC will expect the proposing firm to honor all representations made in its proposal.

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 proposals shall contain the essential information for which the award will be made. The information required to be submitted 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.

RFP Award Notification

After review by the PRC, a recommendation will be made to the SEBC for award of the contract. If the appropriate and required documentation are not signed within a stated time frame, the second alternative vendor will be presented to the SEBC for an award at the next regularly scheduled SEBC meeting.

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. It should be explicitly noted that the SEBC is not obligated to award the contract to the vendor who submits the lowest bid 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 negotiate a contract with the State; remaining vendors will be notified in writing of their selection status.

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 successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP. 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 OMB is a public agency as defined by State law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100 (FOIA). Under the law, all the State's records are public records unless otherwise declared by law to be not public and are subject to inspection and copying by any person. Organizations are advised that when a contract has been fully executed, the contents of the proposal and terms of the contract will become public record and nothing contained in the proposal or contract will be deemed to be confidential except proprietary information. Pricing information and fee structures typically are treated as confidential only until the contract to the awarded vendor has been executed and cannot be included as proprietary information.

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. 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 non-responsive, 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. Proposing firms must submit one hard copy of any information the firm is seeking to be treated as proprietary in a separate, sealed envelope labeled "Proprietary Information" with the RFP name included. The envelope must contain a letter from the proposing firm's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not public record as defined by FOIA at 29 Del. C. § 10002(d) and state the reasons that each document meets the said definitions. The documents must also be provided electronically on a CD with a complete redacted copy. In order to submit a complete electronic copy, you must scan the letter as the first page so that the file is clearly designated.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State will open the envelope to determine if the procedure described above has been followed. Such requests will not be binding on the SEBC to prevent such a disclosure but may be evaluated under the provisions of 29 Del.C. Chapter 100. Any final decisions regarding disclosure under FOIA shall be made at the sole discretion of the OMB. 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, vendors assume the risk that confidential business information included within a proposal may enter the public domain.

Please see Section II.C., *Submission of Proposal*, for a detailed description of the number, format, and type of copies that are required.

All documentation submitted in response to this RFP and any subsequent requests for information pertaining to this RFP shall become the property of the State of Delaware, OMB and shall not be returned to the proposing firm. All proposing firms should be aware that government solicitations and responses are in 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 appendix to your proposal.

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. **Price -** Schedule of Rates
   Cost proposals may be based on the following structures

   a) Fixed Fee structure, and/or
   b)Percentage of Recovery Fee.

Notes:

i. All costs rates must be fully burdened to include, but not limited to, per diem, salaries, travel, lodging and administrative overhead, (inclusive of all expenses)
ii. All cost proposals must be submitted as a separate attachment from all other contract submission documentation.
iii. Prices must be maintained for the duration of the contract.
iv. Proposing vendors may submit a Fixed Fee structure and/or a Percentage Recovery Fee structure, as identified above, for the Medical program review and the Prescription Drug program review. Vendors MAY NOT combine a minimum Fixed Fee structure with an additional supplemental Percentage Recovery Fee structure, and any such offers will be rejected.
v. For a fixed fee proposal, the reviewing firm(s) may bill at the following schedule

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

At its sole discretion, and as it serves the best interest of the state, OMB will reserve the right to negotiate for an award against either price submission, if two separate offerings are proposed by the same vendor.

B. General Terms and Conditions

General

1. **Intent to Bid – You must indicate your intent to bid via email to Mr. Peter Korolyk at Peter.Korolyk@state.de.us by December 1, 2015, no later than noon Local Time.** Upon receipt, a Word document of the RFP will be provided. **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 and address, the name, title, and email address of the primary contact along with the same information for a secondary contact.

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 Mr. Peter Korolyk at Peter.Korolyk@state.de.us.

3. **Definitions** – The following terms are used interchangeably throughout this RFP:

   a. bidder, vendor, contractor, organization, service provider

   b. State Employee Benefits Committee, SEBC, State of Delaware

   c. proposal, bid, vendor's submission

4. **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** the vendor shall notify the contact for this RFP, Mr. Peter Korolyk, electronically, and only electronically, at Peter.Korolyk@state.de.us, at least ten (10) business days before the proposal opening by using the *RFP Terms and Conditions Exception Tracking*, Appendix C. 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 Mr. Peter Korolyk, electronically, and only electronically, at Peter.Korolyk@state.de.us, no later than ten (10) business days prior to the time set for opening of the proposals.

   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.

5. **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, Mr. Peter Korolyk. **All proposing vendors must submit their questions electronically, and only electronically, to Mr. Peter Korolyk at Peter.Korolyk@state.de.us no later than December 7, 2015, by noon Local Time.** So that we can be sure to respond within the context of the question, if you are referring to a specific question or term, you must copy the question or information and reference the section, question number, and/or page number. 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.

Contract/Rate Guarantee Periods

The term of the contract will be for three (3) years beginning July 1, 2016. The vendor must guarantee the rates through June 30, 2019.

Term

The contract between the successful organization and the State is a one-time contract and not subject to renewal. In the event the successful firm materially breaches any obligation under this Agreement, the State may terminate this Agreement upon thirty (30) days written notice.

Performance Guarantees

10% of your fees are subject to Performance Guarantees that will be negotiated and agreed upon prior to contract award. Please suggest no more than four (4) criteria that should be included and the suggested weighting.

Use of Subcontractors

Subcontractors are subject to all the terms and conditions of the RFP.

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 the administrative fees are reported.

A complete and accurate Usage Report (for illustrative purposes, Attachment 4) shall be furnished in an Excel format and submitted electronically to the State's central procurement office no later than the 15th (or next business day after the 15th day) of each month, stating the administrative fees

on this contract. The SBO will submit this report on your behalf, and because this is an employee pay-all program and there no fees paid by the State, the report will state "zero".

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 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). The format used for Subcontracting 2nd Tier report is shown as in Attachment 4.

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.

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.
  - 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 susceptible 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. 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. **Format** - For each requirement or question, retain the numbering/lettering convention, copy the item and state your answer below it. Please completely answer the question even if you must restate information provided in a minimum requirement or in another question.

   In each section, and for each attachment or appendix you reference, clearly separate the corresponding materials with a tab. Please include a table of contents for the appendices.

2. **Hard Copies** – Please submit four (4) complete hard copies - binders are preferred instead of spiral bound - of your proposal to Mr. Peter Korolyk at the following address:

   Mr. Peter Korolyk, Deputy Director
   Office of Management and Budget
   Government Support Services
   100 Enterprise Place, Suite 4
   Dover, DE 19904
   Phone: 302-857-4501

   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 or separated from the rest of the information.

3. **Electronic Copies** – Please include a *complete* electronic copy of your proposal in a PDF format on its own CD. You must scan all the documents; for example, a signed cover letter,

the signed Officer's Statement and any appendices. Please divide the PDF into manageable sections for easier readability.[4] Please label and carefully package the CD.

4. **Redacted Copies –** Information that you assert is confidential and proprietary must be submitted in a redacted form within the entire proposal. This means the information must be blacked out or substituted with a blank page that references the page or document that is missing. For example:

For all transactions, the following conditions must be met:

- individual section policies are followed;
- verbal price quotes are obtained;
- State Contracts must be utilized;
- purchases over $5,000 have a corresponding purchase order prior to the charge; and fragmentation of purchases is prohibited.

In addition, [redacted] Employees must reimburse the State of Delaware for any expenditure above the allowable amounts.

Any questions on requirements should be directed to staff in OMB Financial Operations.

2. Coordinator/Back-Up Coordinator – Designation, Roles and Responsibilities
The Coordinator or Back-Up Coordinator will be responsible for maintaining a file which shows all applications, signed affidavits, and policies and procedures. Any issue that arises with the employee or [redacted] is to be dealt with first by the Coordinator or Back-up Coordinator. The Coordinator or Back-Up Coordinator is also responsible for ensuring that the purchases comply with the state and federal legislation, regulations, policies and procedures. [redacted] and attached to a weekly log (Exhibit C). Any employee not producing a receipt must complete an affidavit statement certifying that they did in fact purchase the particular item. The affidavit statement must be signed by the employee and the supervisor or section designee.

Reconciler - The Reconciler is responsible for applying the chartfield information in the First State Financial system. The Reconciler is also responsible for ensuring that the purchases comply with the state and federal legislation, regulations, policies and procedures.

Approver – [redacted]

3. Request for an Application
All requests need to be addressed to the employee's supervisor for approval. The supervisor then will request a SuperCard approval from the Coordinator or Back-up Coordinator.

One (1) hard copy is needed with the redacted materials. Imagine you are flipping through the hard copy. You would see that section on a page with information blacked out (redacted) that the author considers confidential and proprietary. If an entire document, section or appendix consisting of multiple pages is considered confidential and proprietary, use a blank page with a reference to the missing information. 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)".

One (1) electronic copy is needed with the redacted materials in a PDF format on a separate CD from the non-redacted copy. You must scan all the documents; for example, the signed cover letter, the signed Officer's Statement and any appendices. Please divide the PDF into manageable sections for easier readability. Please label and carefully package the CD.

Recap of Proposal Copy Formats	Hard Copies	PDF Copies on separate CDs

[4] As stated in the *Technical Standards and Security Requirements* section, sub-heading *Directions*, please ensure that your responses (and exhibits, if any) to that section are in a separate tab.

Confidential and Proprietary documents: Only those documents (not redacted) and the attorney's cover letter in a marked and sealed envelope	1	1
Complete bid with redacted sections	1	
Complete bid without redacted sections	4	1

5. **Proposal Submission Date** – Both hard and electronic copies of your complete proposal must be received at the above address no later than 1:00 PM Local Time **on December 18, 2015**. 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. The contents of any proposal shall not be disclosed or made available to competing entities during the negotiation process.

6. **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. In accordance with Executive Order #31 and Title 29, Delaware Code, Chapter 100, the contents of any proposal will not be disclosed to competing vendors prior to contract execution. Proposals become the property of the State of Delaware at the proposal submission deadline.

7. **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*, 23 E, and include it in your bid package.

8. **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 or withdraw submitted proposals after the applicable deadline.

9. **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 posted on the State of Delaware's website at www.bids.delaware.gov.

10. **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 Mr. Peter Korolyk 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.

11. **Proposal Clarification** – The SEBC may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications will be requested in writing and the vendor's responses will become part of the proposal.

12. **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 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.

13. **Reserve for Criminal Background Requirements for Service Providers -** Through a process approved by OMB, all Contractor staff working on this engagement is required to have a criminal background check completed at the Contractor's expense. If OMB determines that, due to criminal convictions reported on the background check, a staff member cannot work on the engagement, the Contract shall remove such staff from the engagement at the request of OMB.

    Prior to initiation of any activities by the Vendor on the engagement, the Vendor must provide a list of all personnel that will be participating in the contract program review and the affirmative results of the criminal background checks to the identified state contract manager.

14. **Retention of Compliance Review Records –** Contract compliance review working papers, summaries and similar records must be retained electronically for at least three years after the completion of the engagement in accordance with the Delaware Public Archives Local Governmental General Records Retention Schedule.

15. **Return of State Documents and Data –** At the end of the engagement all non-working papers (documents provided by the State of Delaware to Contactor) must be destroyed in all forms (e.g. disk, CD, DVD, paper, electronic) except those items required for future audit purposes.

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 correction of the proposal for the purpose of the evaluation.

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.

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 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 fees, the intention to submit a proposal, or the methods or factors used to calculate the fees

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** – By submission of a proposal, the proposing firm represents that it has not retained any person or agency to solicit or secure a contract for the services described herein upon an agreement or understanding for a commission or a percentage, brokerage, or contingent fee. The SEBC will not pay any 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 finder's fees.***

22. **State Financial Responsibility for Contingency Fees**– If OMB has negotiated and agreed to a negotiated contingency fee structure, Delaware's obligation to pay for the performance of services described in Statement of Work will not exceed the percentage of the funds recovered. The Vendor will submit analysis of potential funds recovery and may be negotiated on behalf of the State with the reviewed contract vendor(s) with permission of the Director, Office of Management and Budget, Statewide Benefits Office and Human Resource Management. All monies will be paid by the State of Delaware after verification of funds recovered and approval by the Director, Office of Management and Budget, Statewide Benefits Office and Human Resource Management of the amount of funds recovered. It will be expressly understood that the work defined in the appendices to the Professional Services Agreement (PSA) must be completed by the Vendor and it shall be the Vendor's responsibility to ensure that hours and tasks are properly budged so that all services are completed for the agreed upon contingent fee. Delaware's total liability for all charges for services that may become due under the executed PSA will be limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to the Vendor.

23. **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.

24. **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.

25. **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.

26. **Contact with State Employees** – Direct contact with State of Delaware employees regarding this RFP other than the designated contact, Mr. Peter Korolyk, 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.

27. **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.

28. **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

IMPORTANT: 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. Additionally, the Technology and Data Requirements in Section V are considered minimum requirements.

"Will discuss" and "will consider" are not appropriate answers. If your organization is the current vendor, please reply with a full explanation to every question since the review committee may not be familiar with the current contract or your services.

As an introduction, please provide the firm's name, 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. Include the name and information for the primary contact, including email address, for this RFP. Also, include your company's website address.

1. 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. 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 contract compliance reviews similar in size and complexity. Because more detailed questions follow, please provide only a broad outline here of the organization's years of experience and qualifications listed in the Scope of Services.

2. The individual who will act as the SEBC's primary contact shall be, at a minimum, a senior level manager and shall have at least five (5) years' experience providing contract compliance review services, of which three (3) years' experience must have been in account management compliance review services to clients of similar size. Please provide a statement detailing such experience and a resume.

3. Of your company's current clients, using the list of information below, provide three (3) or more references with an excess of 50,000 eligible lives and 20,000 enrolled lives or participants. One of the three must be a public sector client of any size of eligible lives or participants.

   Your company must have proven ability to perform the services described in this RFP, therefore, you must provide the references at this time in order to show your ability to serve clients of a similar size. If requested in your bid response, the SEBC will agree to notify you before contacting your references during the initial bid analysis process. Then, if selected as a finalist, you will be asked to arrange for your current client references to contact Mr. Peter Korolyk. Specific instructions will be provided at that time.

Include the following information:

a. Client name

b. Client principal location

c. Location servicing account, if different

d. Client contact including name, title address, email and phone number

e. Total number of employees

f. Effective date of contract

4. Please confirm that the primary contact and account management team will be part of any interview team.

5. Please confirm that 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.

6. Please confirm 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.

7. Please confirm your company is appropriately licensed to do business in the State of Delaware and provide a copy of the license.

8. Please confirm that your organization is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.

9. Please confirm that your organization is operating as an independent contractor and 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. The vendor is an independent contractor and is not an employee of the State of Delaware.

10. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Comprehensive General Liability	$1,000,000 per person and $3,000,000 per occurrence
b.	Medical or Professional Liability	$1,000,000 per occurrence and $3,000,000 aggregate
c.	Misc. Errors and Omissions	$1,000,000 per occurrence and $3,000,000 aggregate

The successful vendor must carry (a) and (b) and/or (c), above, depending on the type of service being delivered. If awarded the contract, the State of Delaware shall **not** be named as an additional assured.

The Vendor shall also comply with the state Cyber Liability Insurance policy as identified in Appendix N.

Please provide a copy of your certificate of insurance with the appropriate types and coverage levels.

11. The effective date of the contract awarded under this RFP will be in January, 2016. It is anticipated that the award will be made that same month. Please confirm that if you will be able to complete the project(s) by June 26, 2016.

12. **Please confirm your organization's acceptance. For your response, if you do not accept this indemnity paragraph as written, you must provide a redline of suggested changes. Be advised that the State cannot agree to major changes.**

    Vendor 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 vendor, its agents or employees, or (B) vendor'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) vendor shall have been notified in writing by the State of any notice of such claim; and (ii) vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

13. Please confirm your organization's agreement that:

    a. Only the State may terminate the contract for convenience.

    b. The State requires your organization to confirm that all services identified in your proposal are provided solely by your organization and identify <u>any</u> services that may be provided by a subcontractor. Subcontractors are subject to all the terms and conditions of the RFP. If a subcontractor(s) is involved, note in your response to this question and complete Appendix G, *Subcontractor Information Form*, included herein for <u>each</u>

subcontractor. The company MWBE and veteran owned information is for self-identification only.

14. If your company is awarded the contract, please confirm your agreement that performing the services subject to this RFP, as set forth in 19 Del. C. § 710, you will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

15. Please confirm your organization's acceptance: The RFP and the executed Contract between the State and the successful organization will constitute the Contract between the State and the organization. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP. No other documents will be considered. These documents contain the entire agreement between the State and the organization.

16. Please confirm your organization's acceptance: The payment of an invoice by the SEBC or authorization for receipt of retainage fees if paid directly to vendor by the reviewed entity shall not prejudice the SEBC's right to object or question any invoice or matter in relation thereto. Such payment or authorization by the SEBC shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. Vendor's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the SEBC, based on contract compliance reviews, to not constitute allowable costs. Any payment shall be reduced for overpayment, or increased for underpayment on subsequent invoices.

17. Please confirm your organization's acceptance: The SEBC reserves the right to deduct from amounts that are or shall become due and payable to the vendor under this contract between the parties any amounts which are or shall become due and payable to the SEBC by the vendor.

18. Please confirm your organization's acceptance that any payments made by the State of Delaware will be by Automated Clearing House (ACH) as per its ACH processing procedures.

19. Please confirm that your organization will not use the State's name, either express or implied, in any of its advertising or sales materials without the State's express written consent.

20. 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.

21. Please confirm your acceptance that in the event of any dispute under the contract, you consent to jurisdiction and venue is in the State of Delaware and that the laws of the State of Delaware shall apply to the contract except where Federal law has precedence.

22. Please confirm your acceptance that the State of Delaware 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 of Delaware 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 of Delaware.

23. Please confirm that, if awarded the contract, your organization will accept the terms in the *Business Associate Agreement*, see Appendix O. For your response, if you do not believe that the terms apply to this service, a fully-insured product, please provide your reasons. If you do not accept the terms as written, you must provide a redline of suggested changes. **Be advised that the State cannot agree to major changes.**

24. Please confirm you have filled out the *State of Delaware Non-Collusion Statement* form, Appendix B, and included it in your bid package.

25. Please confirm you have filled out the *Officer Certification Form*, Appendix E, and included it in your bid package.

26. Please confirm you have filled out the *Employing Delawareans Report*, Appendix H, 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.)

IV. Questionnaire

Instructions:

A. 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. 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.

C. 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.

D. If a different response is applicable to any of the Scope of Services or the Commercial versus the Employer Group Waiver contract, please provide all appropriate responses. Otherwise, your response will be considered applicable to all plans.

Part 1 – Medical Contract Compliance Review

A. General Company Information

1. Identify your organization's company name, legal address, and headquarters address.
2. State the name and address of the person authorized to make decisions and represent the company in connection with this RFP. Include the name, title, mailing address, telephone number, and e-mail address.
3. State if your firm has operated under a different name within the past 10 years and provide the name that your firm previously operated under.
4. Attachment A - Include a general organizational chart that gives an overview of all organizational units. Also provide a separate organizational chart(s) for the unit(s) responsible for conducting review services.
5. Identify the name, title, address, telephone number, and email address for the contact person authorized to negotiate and execute a contract resulting from this RFP process.
6. Provide a brief summary of products and services offered by your firm.
7. Within the last three years, has your firm completed or is it in discussion of any mergers or acquisitions of other organizations. If yes, provide a brief explanation.

8. Describe the company ownership. Include information regarding any entity with more than a 10% ownership interest; specify any Third Party Administrator (TPA) or related entity that has any ownership interest.
9. Identify whether your firm currently performs any work for, provides services to, or receives compensation from any TPA or related entity.
10. 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 State, any State agencies or any health plan vendors that provide services to the State.
11. Disclose any current project responsibilities that may present a conflict of interest including other State of Delaware projects.
12. Attachment B - Provide one copy of the organization's most recent audited financial statements in a sealed envelope.

B. EXPERIENCE

1. How long has your company been in business?
2. How many years has your firm been conducting independent Medical contract compliance reviews?
3. Describe the primary location(s) of the contract compliance review staff and IT resources that will be performing the Medical review.
4. Will any subcontractors be used to complete this project? If so, please identify the subcontractor and its role.
5. How many contract compliance reviews similar in scope to the services required by this RFP did your firm conduct during calendar year 2014?
6. Provide the number of contract compliance reviews completed or currently underway in 2015.
7. 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.
8. Has your firm ever been prevented by a vendor from performing a client's contract compliance review? If yes, describe the circumstances.
9. Briefly describe any aspects of your review process that are unique to your firm and that distinguish you from your competitors.
10. Identify any restrictions you believe the vendor may present in completion of the scope of services defined in this RFP.

C. Project Team

1. 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.
2. What is the average industry experience of the contract compliance review team and individuals who will be assigned to the review?
3. Identify each supervisory individual who will be assigned to this project, along with their assigned areas of responsibility.
4. Indicate the use of any subcontracted personnel.
5. Attachment C – Identify all professional staff who will be responsible for the State's account and their areas of responsibility. 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.

D. Project Management

1. How long after being awarded this business would your organization be ready to conduct a kick-off meeting with State representatives?
2. Explain how you will establish coherent guidelines that will insure consistency of techniques, methodology used, and standardization of operations for all reviews.
3. How will the State remain informed on your progress with each review?
4. The State anticipates an in-person discussion for each contract compliance review report; fee is to be included in the cost proposal. Who will present the review reports to the State?
5. Include a detailed timeline for this proposed contract.

E. Operational Review

1. Provide an overview of your operational review process (limit one page).
2. Confirm the proposed services will address the review components identified in the RFP Contract Compliance Review Scope. Identify any tasks not included and provide a brief explanation to include any variations.
3. Describe how you propose to evaluate staffing levels and experience of staff assigned to the State's account.
4. How will you determine that adequate training procedures are used by the vendors to insure that recently hired personnel are adequately trained in administrative procedures, claims processing and maintaining confidentiality?

5. If your review uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?
6. How will you determine and report on claims complaint activity reported/maintained by vendors?
7. 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)?
8. 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?
9. 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.?
10. How will you decide that appropriate administrative procedures are followed by the vendor to insure compliance with contractual obligations?
11. How will you assess claims payment and claims appeals turn-around time to insure that standards are strictly enforced both?
12. How will you review and report on security breaches?
13. Briefly identify any modifications in your proposed review elements to those defined in the Contract Compliance Review Scope defined in this RFP.

F. Contract Compliance Reviews

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.

1. Provide an overview of your proposed medical claims review process (limit one page). Distinguish any vendor modifications.
2. Identify the number of contract compliance reviews your firm has conducted since January 1, 2013.
    a. Highmark Blue Cross Blue Shield Delaware
    b. Aetna
3. Will your staff be assigned to work sequentially or concurrently in order to review Highmark and Aetna?
4. Do you anticipate overlapping work assignments in order to meet the State's deadline?

5. How long will it take your staff to complete each of the contract compliance reviews requested?
    a. Highmark Blue Cross Blue Shield Delaware
    b. Aetna
6. What is your process for reconciling issues identified with the vendor?
7. What steps will your reviewers take to minimize disruption and reduce the impact of the contract compliance review on plan administrators and their staff?
8. How will your reviewers resolve problems/discrepancies that may occur during the contract compliance review (i.e., interpersonal problems or interpretation of contractual obligations)?
9. If your review uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?
10. Explain how your reviewers emphasize and/or report on areas, which if changed or corrected, could result in cost savings to the program.
11. Confirm the medical claims reviewed will include testing of 100 percent of all claims processed for each of the following. Provide an explanation if the proposal does not test 100 percent or does not perform the stated task.
    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
12. How will you verify the validity of any processing errors discovered during an electronic review of claims?
13. State the stratified selection methodology and minimum sample size to be surveyed for measurement of overall administrative performance to achieve the required 95% confidence, and whether confidence is projected for incidence and/or financial accuracy.
14. Provide an overview of the process you propose to insure compliance with performance guarantees and to identify/determine appropriate damage assessments.
15. Confirm the statistically valid claims sample to be reviewed for the administrative components outlined in the Contract Compliance Review Scope. Provide an explanation if a stated task(s) is not proposed.
16. Indicate how your reviewers define errors; explain any weighting. Will your definition be consistent with that used in the administrator's established guarantees?

17. Provide your definition of payment and non-financial errors with mention of any overlap in classification of procedural errors and payment errors.
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?
19. How will you assess how well manual systems are integrated with automated systems?
20. How will you assess system edits, linkages among systems and the frequency and level of manual intervention by administrators/staff?
21. How will you evaluate and report on pre-admission/continued stay review programs operated by the vendors?
22. Describe how you will assess UR for out-of-network services. Will you determine if pre-certification for out-of-network admissions has been obtained from the vendors?
23. Describe how you will evaluate the effectiveness of the vendor's Utilization Review (UR) in conjunction with claims processing. How will you assess that UR staff communicate effectively with claims processors?
24. How will you review the system that is used for determining medical necessity of the claims submitted when pre-certification is not obtained from the vendor's UR staff?
25. How will you assess the need for or effectiveness of hospital review programs operated by the vendors?
26. How will you assess the need for or effectiveness of medical case management operated by the vendors?
27. How will you confirm that vendors subscribe to appropriately established reasonable and customary fee criteria?
28. Describe your methodology for evaluating that DRGs are grouped correctly.
29. How will you review and assess confidential arrangements that have been negotiated between vendors and specific hospitals for discounted rates and any special service provisions?
30. How will you assess that maximum discounts are being negotiated for non-regulated hospitals and non-regulated providers (i.e., extended care facilities, nursing homes)?
31. Describe how you will assess plan cost savings (hospital reviews, large case management).
32. How will you confirm accuracy of the total amount of "out-of-pocket expenses" paid by enrollees separate and apart from the required co-pays?
33. How will you confirm that benefit accumulations are accurately maintained on-line?
34. How will you assess denied/pending claims (e.g., request for additional information,

35. Describe your methodology for reporting on claims backlog and its effect, if any, on the claims adjudication process.
36. How will you identify claims processing problems or areas in need of further review?
37. 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.
38. How will you determine if an adequate system of reviews is used when problem claims are encountered from either subscribers or providers?
39. 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?
40. How you review surgical services including claims paid for related/unrelated surgeries and bundling and unbundling of procedures?
41. Provide references for the three largest clients for whom you have provided medical claims contract compliance review services within the last three years. Provide the company's name and the person we may contact; include the contact's name, title, address, email, and phone number.
42. For each reference, indicate any involvement by staff members who will be servicing the State's account in the event of contract award.
43. What are the most significant results achieved from the reviews for the references provided?
44. 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?

Part 2 – Prescription Drug Contract Compliance Review

A. General Company Information

1. Identify your organization's company name, legal address, and headquarters address.
2. State the name and address of the person authorized to make decisions and represent the company in connection with this RFP. Include the name, title, mailing address, telephone number, and e-mail address.

3. State if your firm has operated under a different name within the past 10 years and provide the name that your firm previously operated under.
4. Attachment A - Include a general organizational chart that gives an overview of all organizational units. Also provide a separate organizational chart(s) for the unit(s) responsible for conducting contract compliance review services.
5. Identify the name, title, address, telephone number, and email address for the contact person authorized to negotiate and execute a contract resulting from this RFP process.
6. Provide a brief summary of products and services offered by your firm.
7. Within the last three years, has your firm completed or is it in discussion of any mergers or acquisitions of other organizations. If yes, provide a brief explanation.
8. Describe the company ownership. Include information regarding any entity with more than a 10% ownership interest; specify <u>any</u> Pharmacy Benefit Manager (PBM) or related entity that has any ownership interest.
9. Identify whether your firm currently performs any work for, provides services to, or receives compensation from any PBM or related entity.
10. 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 State, any State agencies or any health plan vendors that provide services to the State.
11. Disclose any current project responsibilities that may present a conflict of interest including other State of Delaware projects.
12. Attachment B - Provide one copy of the organization's most recent audited financial statements in a sealed envelope.

B. EXPERIENCE

1. How long has your company been in business?
2. How many years has your firm been conducting independent Prescription Drug contract compliance reviews?
3. Describe the primary location(s) of the contract compliance review staff and IT resources that will be performing the Prescription Drug review.
4. Will any subcontractors be used to complete this project? If so, please identify the subcontractor and its role.
5. How many reviews similar in scope to the services required by this RFP did your firm conduct during calendar year 2014?
6. Provide the number of reviews completed or currently underway in 2015.

7. 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.

8. Has your firm ever been prevented by a vendor from performing a client's contract compliance review? If yes, describe the circumstances.

9. Briefly describe any aspects of your contract compliance review process that are unique to your firm and that distinguish you from your competitors.

10. Identify any restrictions you believe the vendor may present in completion of the scope of services defined in this RFP.

C. Project Team

1. 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.

2. What is the average industry experience of the contract compliance review team and individuals who will be assigned to the review?

3. Identify each supervisory individual who will be assigned to this project, along with their assigned areas of responsibility.

4. Indicate the use of any subcontracted personnel.

5. Attachment C – Identify all professional staff who will be responsible for the State's account and their areas of responsibility. 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.

D. Project Management

1. How long after being awarded this business would your organization be ready to conduct a kick-off meeting with State representatives?

2. Explain how you will establish coherent guidelines that will insure consistency of techniques, methodology used, and standardization of operations for all contract compliance reviews.

3. How will the State remain informed on your progress with each contract compliance review?

4. The State anticipates an in-person discussion for each contract compliance review report; fee is to be included in the cost proposal. Who will present the review reports to the State?

5. Include a detailed timeline for this proposed contract.

E. Operational Review

1. Provide an overview of your operational review process (limit one page).
2. Confirm the proposed services will address the review components identified in the RFP Contract Compliance Review Scope. Identify any tasks not included and provide a brief explanation to include any variations.
3. Describe how you propose to evaluate staffing levels and experience of staff assigned to the State's account.
4. How will you determine that adequate training procedures are used by the vendors to insure that recently hired personnel are adequately trained in administrative procedures, claims processing and maintaining confidentiality?
5. If your contract compliance review uncovers claims administration weaknesses, how are these discussed with the vendor prior to inclusion in your final report?
6. How will you determine and report on claims complaint activity reported/maintained by vendors?
7. 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)?
8. 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?
9. 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.?
10. How will you decide that appropriate administrative procedures are followed by the vendor to insure compliance with contractual obligations?
11. How will you assess claims payment and claims appeals turn-around time to insure that standards are strictly enforced both?
12. How will you review and report on security breaches?
13. Briefly identify any modifications in your proposed review elements to those defined in the Contract Compliance Review Scope defined in this RFP.

F. Contract Compliance Reviews

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.

1. Provide an overview of your proposed prescription drug review process (limit one page).
2. Identify the number of Express Scripts contract compliance reviews your firm has conducted since January 1, 2013.
3. Do your reviewers maintain any medical licensure/credentials that enhance their qualifications to conduct a prescription drug claim contract compliance review?
4. Confirm the prescription drug contract compliance review includes testing of 100 percent of all claims processed for each of the following. Provide an explanation if the proposal does not test 100 percent or does not perform the stated task.
   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
5. Confirm the prescription rebate review includes the following. Provide an explanation if the proposal does not test 100 percent or does not perform the stated task.
   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
6. 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. Identify any obstacles you anticipate will be presented by Express Scripts in allowing your firm to provide the services defined in the State's Contract Compliance Review Scope.

8. What is your process for reconciling issues identified with the vendor?
9. What steps will your reviewers take to minimize disruption and reduce the impact of the contract compliance review on plan administrators and their staff?
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)?
11. If your review uncovers claims administration weaknesses, are these discussed with the vendor prior to inclusion in your final report?
12. Explain how your reviewers emphasize and/or report on areas, which if changed or corrected, could result in cost savings to the program.
13. How will you verify the validity of any processing errors discovered during an electronic review of claims?
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?
15. Explain how your reviewers will assess the retail claims adjudication system used by the PBM (including coding accuracy, etc.), and related performance guarantees.
16. Describe the steps your reviewers will take to confirm that the PBM's claim payment system permits and correctly assesses multi-tiered co-pays (including the assessment of co-pays for brand name drugs when generic drugs are available and co-pays assessed to participants). How will you evaluate the utilization of formulary?
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?
18. How will your reviewers report any weaknesses of DUR and provide recommendations for improvement?
19. How will your reviewers assess that the State is receiving maximum rebates negotiated by the PBM with manufacturers?
20. What is your process for reconciling issues identified with Express Scripts?
21. Provide references for the three largest clients for whom you have provided prescription drug contract compliance review services within the last three years. Provide the company's name and the person we may contact; include the contact's name, title, address, email, and phone number.
22. For each reference, indicate any involvement by staff members who will be servicing the State's account in the event of contract award.

23. What are the most significant results achieved from the contract compliance reviews for the references provided?
24. Do you have a standing agreement(s) (confidentiality, audit, non-disclosure) with Express Scripts (ESI)? If not, what has been your experience in negotiating those agreements with ESI ? How long from notice to award will it take you to get signed agreements?

HIPAA Compliance Questionnaire – Applicable for Both Parts

As a covered entity, it is the responsibility of the State to ensure its members' health information is protected from use and disclosures not allowed under the Health Insurance Portability and Accountability Act (HIPAA), as well as applicable state or federal laws.

The purpose of this form is to help the Plan evaluate compliance readiness of a prospective vendor who may request member data containing protected health information (PHI). Information provided will enable the Plan to determine the vendor's level of understanding of HIPAA privacy and security rules, as well as their compliance status.

Vendor's Information

Company name: _____

Address (city, state, and zip code): _____

Website URL _____

Name of person completing form: _____

E-mail address: _____

Phone number: _____

Fax number: _____

Contact person's name, phone number, and e-mail address, if different from person completing form:

_____

Please note that you will be required to submit new contact information for any change in personnel related to this contract.

Compliance Check List

1. Name of individual responsible for HIPAA Compliance (if this designated position does not exist, provide the name and title of the employee who handles HIPAA privacy and security issues within your company or organization):

Address _____

Phone number _____

E-mail address _____

Certification designation (e.g., CHC, CISSP, CIPP, CHP, or CHPSE) _____

Date certified _____

2. If not certified, provide detailed information regarding training undertaken by the person responsible for HIPAA compliance (e.g., date last received training, name of company or person that provided training, etc.):

3. Do all employees receive comprehensive training (training which covers the privacy and security of PHI; both physical and technical)?

If yes, please provide the date of the most recent training:

If no, provide details of the level of training made available to all employees.

4. Has employee training been updated to reflect the Omnibus Rule of 2013?

If yes, please provide the date of that training.

If no, indicate when the training will be provided to employees.

5. Is HIPAA training mandatory for all employees or only those employees who use, disclose or have access to PHI?

6. Are HIPAA privacy policies and procedures in place for employees to follow?

7. Are employees trained on the policies and procedures?

8. Are employees required to sign an agreement stating they have read and understand the privacy policies and procedures?

9. Please provide a separate list of all privacy policies.

10. Are HIPAA security policies and procedures in place for employees to follow?

11. Are employees trained on the policies and procedures?

12. Are employees required to sign an agreement stating they have read and understand the security policies and procedures?

13. Please provide a separate list of all security policies.

14. Can you provide a certification that all employees have completed training?

15. Provide details of the methods the company utilizes for securing and rendering PHI unusable, unreadable, or indecipherable to unauthorized individuals:

16. Describe security procedures – physical, technical and administrative - currently in place to ensure confidentiality of protected health information within systems and when transmitting data to the Plan, the Plan's PBM(s) or vendors designated by the Plan.

17. Has the company conducted a risk assessment and gap analysis to address any findings?

If yes, provide the date the analysis was last performed and who performed it.

18. Has the company conducted an application & data criticality analysis?

If yes, provide the date it was last performed.

19. Are you able to provide a copy of a SOC report upon request?

How often does the company conduct SOC reviews?

20. Please describe the company's disaster recovery plan for data backup, data recovery, and system testing should a disaster occur (e.g., flood, fire, or system failure).

If that plan has been invoked in the last two (2) years, please provide the details of that incident.

21. Please describe the company's business continuity plan in the event of a disaster (e.g., flood, fire, power failure, system failure).

If the plan has been invoked in the last two (2) years, please provide the details of that incident:

22. Has your organization received any certifications to become "HIPAA Compliant"? (If yes, please provide copies and the date when the certification was awarded.)

23. When was the last time you conducted an review to determine HIPAA Compliance status? (If yes, please provide date the review was performed and the name of the company who performed it. You may be asked to provide copies of the review findings at a later date.)

24. Do you outsource work to sub-contractors who would have access to Plan data and PHI? (If yes, please provide the names of the companies you outsource work to and where they are located.):

25. Have you entered into business associate agreements with all vendors who may qualify as "subcontractors" to the Plan for this work (If so, you may be asked to provide signature pages of BAAs at a later date)?

26. Have you had occasion to review any subcontractors and can you provide information as to whether they are HIPAA complaint at this time? (If so, you may be asked to provide this information at a later date.

27. Please provide a the number of HIPAA violations reported to the Office of Civil Rights (OCR) in the last five (5) years and include the amount of the fine incurred (if any):

_____

Name of HIPAA Compliance Officer
(Or person authorized to complete questionnaire)

_____

Signature

_____

Date

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.

DIRECTIONS –

A. Because your responses to this section of the RFP will be analyzed by a different department, please provide your hard copy responses in a separate section or tab. For the pdf submission, please submit a separate and complete pdf copy. (You must also scan the documents with signatures, such as *Subcontractor* form(s), to include with your complete electronic copy.)

B. The *Technology Exception Tracking Chart*, Appendix J, for this section is different and separate from the chart for the *Responses Exception Tracking*, Appendix C. If you have an exception, you must copy and paste the term into the chart and provide a detailed explanation, or, check the box to acknowledge that you take no exceptions in this section and submit it with your bid package. Exceptions of the terms in Appendix L, *Non-Public Data Owned by the State of Delaware - State of Delaware Cloud and/or Offsite Hosting Mandatory Terms and Conditions*, must be included with your response on that form.

REQUIREMENTS -

1. File Layouts:

   Any data exchange required from state systems is subject to an approved format by the State of Delaware as to layout and content.

2. Indemnity**:**
   Please confirm your organization's acceptance. For your response, if you do not accept this indemnity paragraph as written, you must provide a redline of suggested changes. Be advised that the State cannot agree to major changes.

   Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, including any claims or expenses with respect to the resolution of any **data security breaches/ or incidents,** together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the vendor, its agents or employees, or (B) vendor'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) vendor shall have been notified in writing by the State of any notice of such

claim; and (ii) vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

Response:

3. 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.

      Response:

   b. Please complete Appendix L, *Non-Public Data Owned by the State of Delaware - State of Delaware Cloud and/or Offsite Hosting Mandatory Terms and Conditions*, and include it in your bid package. **If you have any response other than "accepted" or "confirmed" with an explanation**, your response is considered an exception that will be evaluated by the SEBC. Provide a detailed explanation **on this form only**, Appendix L, and include a citation, if applicable (for example, Delaware Department of Insurance or a federal law). This document will be an attachment to Appendix M, *Data Confidentiality Agreement*, that applies to data exchange during implementation and before the contract effective date of July 1, 2016. It will also be an exhibit to the contract.

      Response:

   c. Data Confidentiality Agreement –
      Part 1: The *Data Confidentiality Agreement*, Appendix M, is required of the awarded vendor before data exchanges can take place for implementation prior to the Open Enrollment period. The *Technology Mandatory Terms and Conditions* document, Appendix L, will be an attachment to the *Data Confidentiality Agreement* and, therefore, **the same data technology requirements that are in effect for the contract will also be in effect during implementation and prior to the effective date of the contract, July 1, 2016**. If your organization has suggested changes to the *Data Confidentiality Agreement*, please provide a red-lined document with explanations. **Be advised, however, that the State cannot agree to major changes.**

      Part 1 Response:

      Part 2: After the finalist interview, if your organization is selected by the Proposal Review Committee (PRC) as their recommendation to the SEBC for the contract award, the Department of Technology and Information (DTI) must approve the technology section of your bid submission. **Within ten (10) business days of the approval by DTI, the *Data Confidentiality Agreement* must be signed by your organization and any**

subcontractor(s) used for technology services. If the document is not signed within ten (10) business days, the PRC recommendation to award the contract will be withdrawn. Alternatively, if the contract is awarded by the SEBC before the DTI review process is complete, the award will be contingent upon DTI's approval and the signature of the *Data Confidentiality Agreement* within ten (10) business days.

Part 2 Response:

d. Additional security measures are required by the State of Delaware for the transmission of its data. Please refer to the following policies and respond:

   i. **The requirement of at least ten (10) characters in a password is non-negotiable.** The policy document is located at: http://dti.delaware.gov/pdfs/pp/StrongPasswordStandard.pdf

      Response:

   ii. If Delaware data will be transmitted via email or accessible on a mobile devices, the following requirements apply:

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

      Response:

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

      Response:

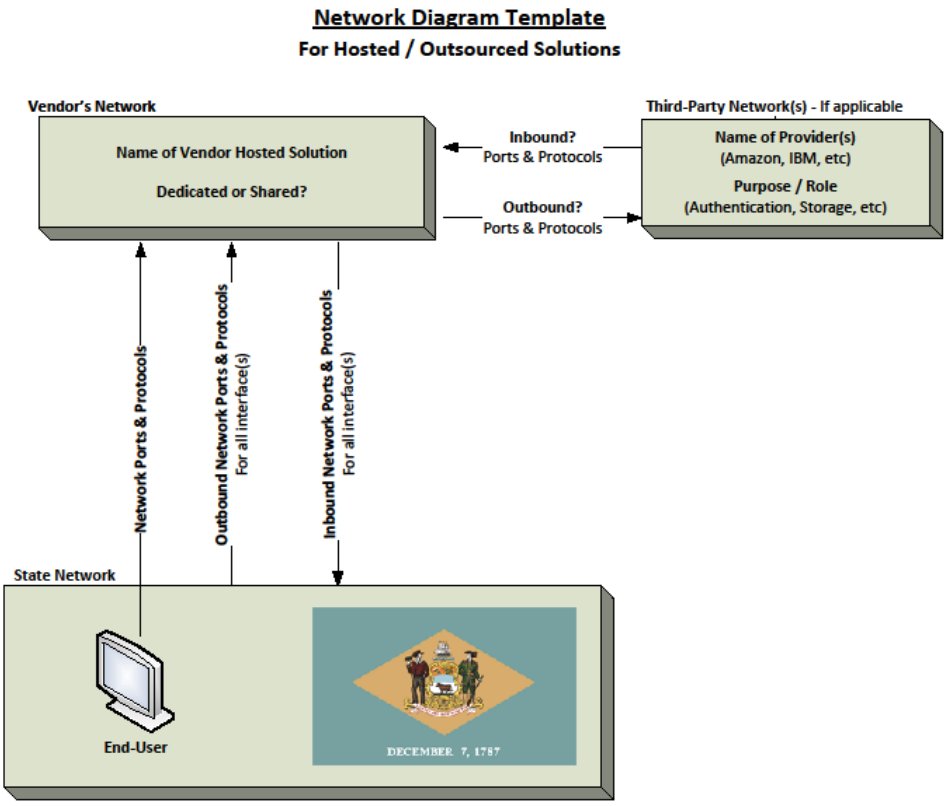
4. Software Inventory:
   A software inventory is required that lists any software that the State needs if you are awarded the contract. For example, a certain web browser (IE) or web service technology for an interface. Please use the form at Appendix K – *Software Inventory*.

   Confirm Attached:

5. <u>Additional Data Requests</u>:
   Please confirm your agreement that if you are awarded the contract and then request additional data, whether or not on a file feed or in a report, the State shall determine the cost of supplying the data and may deny the request.

   Response:

6. <u>Network Diagram:</u>
   Please provide a diagram with ports that clearly documents the user's interaction with your organization's website and the State. The network diagram should follow the following example:



   Confirm Attached:

APPENDICES

APPENDIX A

The State of Delaware reserves the right to reject any and all proposals, to waive any informalities or irregularities in the proposals received, and to award by item or total or any combination of proposals deemed most favorable to the State.

Proposals are requested on a stated rate which shall remain fixed for the period of the contract. The Proposals shall remain valid and open for acceptance for a period of at least ninety (90) calendar days after the date specified for receipt of proposals; this term must be expressly stated within the bidders proposal.

All costs must be included on these sheets in order to be reimbursed. For bids that include subcontractors, subcontractor personnel and costs must also be calculated as part of the bidder's total cost.

PLEASE REMEMBER, COST INFORMATION MUST ONLY BE PROVIDED IN THIS SECTION OF THE BID AND SUBMITTED SEPARATELY FROM THE TECHNICAL PROPOSAL.

I. PRICE PROPOSAL

1. Confirm your fees are presented on an "all inclusive" basis, including travel expenses and an in-person report presentation.

2. Confirm your fee will remain valid 180 days from the proposal due date.

3. Outline the expected schedule of payments to your firm.

4. Detail all performance guarantees that will be offered as part of this engagement, including standards and the amounts at risk. Performance guarantees should consider continuity in lead personnel, timely updates to the State, satisfaction reports from State and their administrators, and other aspects that guarantee quality contract compliance review services to the State.

STATE OF DELAWARE
RFP # _____ FOR
CLAIMS CONTRACT COMPLIANCE REVIEW SERVICES
FEE PROPOSAL FORM – FIXED FEE

I have read and understand the requirements of this proposal, RFP #_____, and agree to provide the required services in accordance with this proposal, and all other attachments, exhibits, etc. The proposed fee shall include all labor, material, equipment, insurance to provide the services as outlined including any travel or per diem expenses, and any and all other miscellaneous expenses involved in providing the proposed services.

Administrator	Total Fixed Fee Maximum Billable Amount
Highmark & Aetna	
Express Scripts	
Total Fee [1]	

The fixed fee approach must include a fixed total cost and the total project cost which will not exceed the amount specified. The State is not interested in allowing for a combination of Fixed Fee research and then a further Contingency Fee award.

For the alternative approach, contingent fee pricing, please use the form below.

[1] Bidder may show a total less than the individual review fees to present a discount for award of both review engagements.

Firm Name:_____
Address of Firm:_____
Telephone:_____
Fax Number:_____
Signature:_____
Name & Title of Signer:_____
E-mail Address:_____

STATE OF DELAWARE
RFP # _____ FOR
CLAIMS CONTRACT COMPLIANCE REVIEW SERVICES
FEE PROPOSAL FORM – CONTINGENCY FEE

I have read and understand the requirements of this proposal, RFP #_____, and agree to provide the required services in accordance with this proposal, and all other attachments, exhibits, etc. The proposed fee shall include all labor, material, equipment, insurance to provide the services as outlined including any travel or per diem expenses, and any other miscellaneous expenses involved in providing the proposed services.

Administrator	Contingent Fee
Highmark & Aetna	
Express Scripts	
[1]	

A contingent fee would be a fee based **on the amount of recoveries that the State actually receives**. A contingent fee could include a maximum fee amount. If a contingent fee is proposed, please include complete details as to how the fee would be calculated.

[1] Bidder may show a second table of Contingent Fees to present a discount for award of both audit engagements.

Firm Name:_____
Address of Firm:_____
Telephone:_____
Fax Number:_____
Signature:_____
Name & Title of Signer:_____
E-mail Address:_____

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 sub-contractor 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, Office of Management and Budget.

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, Office of Management and Budget.

	Corporation
	Partnership
	Individual

COMPANY NAME _____
(Check one)

NAME OF AUTHORIZED REPRESENTATIVE _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER_____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE LICENSE NUMBER_____

	Certification type(s)	Circle all that apply
COMPANY CLASSIFICATIONS: CERT. NO.: _____	Minority Business Enterprise (MBE)	Yes No
	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

RESPONSES EXCEPTION TRACKING

Responses must include all exceptions to the requirements, specifications, terms or conditions in the *Minimum Requirements* and *Questionnaire* sections. If the vendor is submitting the response without exceptions, please state so below.

☐ By checking this box, the vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in the *Minimum Requirements* and *Questionnaire* sections.

Name of Section, Page # and ? #	(Copied) Term	Detailed Exception	Proposed Alternative, if different

APPENDIX D

PERFORMANCE GUARANTEES

INSTRUCTIONS: If you propose alternative guarantees, performance results, or definitions, please use a strikeout font and insertion. **You must fill out** the column labeled "% of Premiums at Risk" so the total equals 5.0% of premiums, which is the minimum level the State requires. The State does, however, reserve the right to negotiate both financial and non-financial performance guarantees with the selected vendor.

Terms: Vendor will perform a review of its records to determine whether each standard was met for the time period of the quarter immediately preceding the 45th day of the month following the end of a quarter (for example, September 15 for the first quarter of the plan year – July 1 to June 30). Quarterly results will be averaged on an annual basis and penalty payments, if any, will be made annually within six (6) months of the end of the plan year. In no instance will a measurement or penalties apply to any period less than a full quarter.

Guarantee	Performance Results	Definition/Calculation	% of Fees Risk
Implementation			
		Self-Explanatory	

APPENDIX E

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 State of Delaware's Request for Proposal for the Cost Control and Program Integrity Review is complete and accurate to the best of my knowledge and contains no material omissions or misstatements. I acknowledge that the State of Delaware will rely upon the information included in our response to make decisions concerning the administration of these benefits that are offered to their employees.

_____

Officer's Signature

_____

Date Signed

APPENDIX F

RFP TERMS AND CONDITIONS EXCEPTION TRACKING CHART

Responses must include all exceptions to the specifications, terms or conditions in the *Scope of Services* and *Terms and Conditions* section – not the *Minimum Requirements* and *Questionnaire* sections. If the vendor is submitting their response without exceptions, please state so below.

☐ By checking this box, the vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in the *Scope of Services* and *Terms and Conditions* section.

Page and ? #s	(Copied) Term	Detailed Exception	Proposed Alternative, if different

Note: Feel free to create an excel document with these columns. Use additional pages as necessary.

APPENDIX G

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO.	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise ☐ Yes ☐ No 4e. Minority Business Enterprise ☐ Yes ☐ No 4f. Disadvantaged Business Enterprise ☐ Yes ☐ No 4g. Veteran Owned Business Enterprise ☐ Yes ☐ No 4h. Service Disabled Veteran Owned Business Enterprise ☐ Yes ☐ No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (*Signature)*	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (*Signature*)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

APPENDIX H

EMPLOYING DELAWAREANS REPORT[5]

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 *bona fide* legal residents of Delaware.	
3.	Total number of employees of the bidder.	
4.	Total percentage of employees who are *bona fide* 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.	

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

APPENDIX I

FINANCIAL RATINGS

Vendor supplied

APPENDIX J

TECHNOLOGY EXCEPTION TRACKING CHART

Responses must include all exceptions to the specifications, terms or conditions contained only in the *Technology Standards and Security Requirements* section (except for those exceptions taken on Appendix L, *Technology Mandatory Terms and Conditions*, as instructed). If the vendor is submitting the response without exceptions, please state so below.

☐ By checking this box, the vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in the *Technology Standards and Security Requirements* section.

Page and ? #s	(Copied) Term	Detailed Exception	Proposed Alternative, if different

APPENDIX K

SOFTWARE INVENTORY

Please list any software that the State will need to have installed on servers or user's machines.

Example: (Internet Explorer, IE8 in Compatibility Mode, Microsoft, Yes, Yes)

Software Product Name	Version	Vendor	Required for Development?	Required for Production/Support ?

Appendix L

Non-Public Data Owned by the State of Delaware
State of Delaware Cloud and/or Offsite Hosting Mandatory Terms and Conditions

1. **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.[6] The Service Provider shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) in 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.

Response:

2. **Data Protection:** Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Service Provider to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. To this end, the Service Provider shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:

   a) All information obtained by the Service Provider under this contract shall become and remain property of the State of Delaware.

   b) At no time shall any data or processes which either belongs to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the Service Provider or any party related to the Service Provider for subsequent use in any transaction that does not include the State of Delaware.

Response:

3. **Data Location**: The Service Provider shall not store or transfer non-public State of Delaware data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of Delaware data remotely only as required to provide technical support.[7]

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[6] If, due to the nature of your product, the ownership of the data transfers to your organization when the data is under your control, please so state and provide an explanation and, if applicable, a citation for a regulation or law.

[7] The awarded vendor will be required to comply with the Offshore IT Staffing Policy: http://dti.delaware.gov/pdfs/pp/OffshoreITStaffingPolicy.pdf. The primary contractor must reside in the United States, be licensed for business in Delaware, and shall be liable for any noncompliance by any subcontractor. It is explicitly forbidden for the primary contractor or subcontractor staff to "share" access privileges. Describe your organization's relationship with any offshore staff, either as employees of your company or that of any subcontractor. State the scope (number and location) of the personnel, their role, and the process of data exchange, including a description of the data security measures.

Response:

4. **Encryption:**

a) **Data in Transit**: The Service Provider shall encrypt all non-public data in transit regardless of the transit mechanism. The policy documents are located at: http://dti.delaware.gov/pdfs/pp/SecureFileTransport.pdf and http://dti.delaware.gov/pdfs/pp/DataClassificationPolicy.pdf

b) **Encryption at Rest**: For engagements where the Service Provider stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. The policy document is located at: http://dti.delaware.gov/pdfs/pp/WebApplicationSecurity.pdf. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Service Provider's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the Cloud and Offsite Hosting Policy, http://dti.delaware.gov/pdfs/pp/CloudandOffsiteHostingPolicy.pdf. Additionally, where encryption of data at rest is not possible, the vendor must describe existing security measures that provide a similar level of protection.

Response:

5. **Breach Notification and Recovery**: Delaware Code requires public breach notification when citizens' personally identifiable information is lost or stolen. (Reference: 6 Del. C. § 12B-102. http://delcode.delaware.gov/title6/c012b/index.shtml) Additionally, unauthorized access or disclosure of non-public data is considered to be a breach. The Service Provider will provide notification without unreasonable delay and all communication shall be coordinated with the State of Delaware. When the Service Provider or their sub-contractors are liable for the loss, the Service Provider shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless.

Response:

6. **Notification of Legal Requests**: The Service Provider shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Service Provider shall not respond to subpoenas, service of process, and other legal

requests related to the State of Delaware without first notifying the State unless prohibited by law from providing such notice.

Response:

7. **Termination and Suspension of Service:** In the event of termination of the contract, the Service Provider shall implement an orderly return of State of Delaware data in CSV or XML or another mutually agreeable format. The Service Provider shall guarantee the subsequent secure disposal of State of Delaware data.

   a) **Suspension of Services**: During any period of suspension or contract negotiation or disputes, the Service Provider shall not take any action to intentionally erase any State of Delaware data.

   b) **Termination of any Services or Agreement in Entirety**: In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any State of Delaware data for a period of ninety (90) days after the effective date of the termination. After such 90 day period, the Service Provider shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession or under its control as specified in section 7d) below. Within this ninety (90) day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract.

   c) **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 Agreement.

   d) **Secure Data Disposal**: When requested by the State of Delaware, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable according to National Institute of Standards and Technology. The policy document is located at: http://dti.delaware.gov/pdfs/pp/DisposalOfElectronicEquipmentAndStorageMedia.pdf

Response:

8. **Background Checks:** The Service Provider shall conduct criminal background checks and not utilize any staff, including sub-contractors, to fulfill the obligations of the contract who has been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or any misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. The Service Provider shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents.

Response:

9. **Data Dictionary:** Prior to go-live,[8] the Service Provider shall provide a data dictionary in accordance with the State of Delaware Data Modeling Standard at http://dti.delaware.gov/pdfs/pp/DataModelingStandard.pdf

Response:

10. **Security Logs and Reports:** The Service Provider shall allow the State of Delaware access to system security logs that affect this engagement, its data and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.

Response:

11. **Contract Audit:** The Service Provider shall allow the State of Delaware to audit conformance including contract terms, system security and data centers as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least thirty (30) days advance written notice and shall not unreasonably interfere with the Service Provider's business.

Response:

12. **Sub-Contractor Disclosure:** The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, who will be involved in any application development and/or operations.[9]

[8] In this instance, "go live" means that if your organization is awarded the contract, for Delaware data only, upon approval by the State, and before the first data exchange. If your organization wishes to claim this information as proprietary and confidential, follow the directions in Section I.F., *Confidentiality of Documents*.

[9] Subcontractors are subject to all the terms and conditions of the RFP. If a subcontractor(s) is involved, note in your response to this question and complete Appendix G, *Subcontractor Information Form*, included herein for each subcontractor.

Response:

13. **Operational Metrics:** The Service Provider and the State of Delaware shall reach agreement on operational metrics and document said metrics in the Service Level Agreement.[10]

    Examples include but are not limited to:

    a) Advance notice and change control for major upgrades and system changes

    b) System availability/uptime guarantee/agreed-upon maintenance downtime

    c) Recovery Time Objective/Recovery Point Objective

    d) Security Vulnerability Scanning

Response:

By signing this agreement, the Service Provider agrees to abide by all of the above Terms and Conditions.

Service Provider Name/Address (print): _____

_____

_____

Authorizing Official's Title (print): _____

Authorizing Official's Signature: _____

Date: _____

[10] For this product, the terms would be in the contract's statement of work or performance guarantees.

Appendix M

DEPARTMENT OF TECHNOLOGY AND INFORMATION
William Penn Building
801 Silver Lake Boulevard
Dover, Delaware 19904-2407

CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT

The Department of Technology and Information is responsible for safeguarding the confidentiality and integrity of data in State computer files regardless of the source of those data or medium on which they are stored; e.g., electronic data, computer output microfilm (COM), tape, or disk. Computer programs developed to process State Agency data will not be modified without the knowledge and written authorization of the Department of Technology and Information. All data generated from the original source data, shall be the property of the State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

I/we, as an employee(s) of _____ or officer of my firm, when performing work for the Department of Technology and Information, understand that I/we act as an extension of DTI and therefore I/we are responsible for safeguarding the States' data and computer files as indicated above. I/we will not use, disclose, or modify State data or State computer files without the written knowledge and written authorization of DTI. Furthermore, I/we understand that I/we are to take all necessary precautions to prevent unauthorized use, disclosure, or modification of State computer files, and I/we should alert my immediate supervisor of any situation which might result in, or create the appearance of, unauthorized use, disclosure or modification of State data.

Penalty for unauthorized use, unauthorized modification of data files, or disclosure of any confidential information may mean the loss of my position and benefits, and prosecution under applicable State or Federal law.

This statement applies to the undersigned Contractor and to any others working under the Contractor's direction.

I, the Undersigned, hereby affirm that I have read DTI's Policy on Confidentiality (Non-Disclosure) and Integrity of Data and understood the terms of the above Confidentiality (Non-Disclosure) and Integrity of Data Agreement, and that I/we agree to abide by the terms above.

Contractor Signature_____
Title: _____
Date: _____
Contractor Name: _____

Appendix N

Cyber Responsibilities, Liability and Insurance

A. Vendor Protection of Customer Data

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

B. Definitions

Data Breach

1. In general the term "data breach" means a compromise of the security, confidentiality, or integrity of, or the loss of, computerized data for the State of Delaware that results in, or there is a reasonable basis to conclude has resulted in :

   1. 1 The unauthorized acquisition of personally identifiable information (PII); or

   1. 2 Access to PII that is for an unauthorized purpose, or in excess of authorization,

2. Exclusion

   2.1 The term "data breach" does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

Personally Identifiable Information (PII)

1. Information or data, alone or in combination that identifies or authenticates a particular individual.

   1. 1 Such information or data may include, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records numbers), Criminal history, Citizenship status, Medical information, Financial Information, Usernames, Answers to security questions or other personal identifiers.

2. Information or data that meets the definition ascribed to the term "Personal Information" under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

Customer Data

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

Security Incident

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

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

1. Vendor shall notify State of Delaware, Department of Technology and Information (DTI) and Government Support Services (GSS) without unreasonable delay when the vendor confirms a data breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.

   1. 1 Should the State of Delaware or the awarded vendor determine that a data breach has actually occurred; the awarded vendor will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by VENDOR, DTI, and GSS.

   1. 2 Should any corrective action resultant from Section B.1.1. above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall reside with DTI.

   1. 3 In the event of an emergency the awarded vendor may take reasonable corrective action to address the emergency. In such instances the corrective action will not be considered final until approved by DTI.

   1. 4 For any record confirmed to have been breached whether such breach was discovered by the awarded vendor, the State, or any other entity and notwithstanding the definition of personally identifiable information as set forth at 6 *Del. C.* § 12B-101 the awarded vendor shall:

      1.4.1.Notify in a form acceptable to the State, any affectedindividual as may be required by 6 *Del. C.* § 12B-101of the Delaware Code.

      1.4.2. Provide a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach.

      1.4.3. Meet and confer with representatives of DTI and GSS regarding required remedial action in relation to any such data breach without unreasonable delay.

      1.4.4. Bear all costs associated with the investigation, response and recovery from the breach, such as 3-year credit monitoring services, mailing costs, website, and toll free telephone call center services.

D. No Limitation of Liability for Certain Data Breaches

1. Covered Data Loss

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

2. Covered Disclosure

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

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

E. Cyber Liability Insurance

1. An awarded vendor unable to meet the DTI Cloud and Offsite Hosting Policy requirement of encrypting PII at rest shall, ***prior to execution of a contract***, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded vendor shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s).

2. Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. The level applicable to this contract is**: [Level 4].** Should the actual number of PII records exceed the anticipated number, it is the vendor's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that vendor fails to obtain sufficient coverage, vendor shall be liable to cover damages up to the required coverage amount.

   NOTE: The contract officer is to engage Agency IRM and/or DTI, for identification of the anticipated number of PII records.

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

F. Compliance

1. The awarded vendor(s) is required to comply with applicable security-related Federal, State, and Local laws.

G. Media Notice

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

H. Points of Contact – Data Breach

1. State of Delaware

   Department of Technology and Information
   Elayne Starkey, Chief Security Officer
   elayne.starkey@state.de.us; 302.739.9631

Appendix O

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BA Agreement") is undertaken pursuant to the parties' performance of a certain contract ("Contract") dated as of _____, 20__ 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 C.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.

C. 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, 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.

C. 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.

C. **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.

C. 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 VIII, 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.

C. **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.

C. **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: ___By: Brenda L. Lakeman

Title: Director of Human Resource ManagementTitle:
and Benefits Administration

Printed Name

Address for Notices: **Address for Notices:**

Statewide Benefits Office, OMB
Attention: Ms. Brenda L. Lakeman, Director
HR Mgt and Benefits Administration
Duncan Center, Suite 320
500 W. Loockerman Street
Dover, DE 19904