



State of Delaware
Office of Management & Budget
Statewide Benefits Office

STATEWIDE BENEFITS OFFICE

**Request for Information and Qualifications Regarding the
Feasibility for Employer-Sponsored Clinics**

***Release Date:* Monday, April 3, 2017**

Deadline to Respond –
Friday, April 24, 2017, 1:00 p.m. ET (Local Time)

OMB17001–EmplyrClinic

Enterprise Business Park, 97 Commerce Way, Suite 201 • Dover, DE 19904
Phone (800) 489-8933 Fax (302) 739-8339 www.ben.omb.delaware.gov

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Supplemental Data – Available upon request:

- 1. Summary data on number of employees enrolled in medical coverage by State of Delaware worksite location
- 2. Summary data on medical services utilization for State of Delaware employees

I. Introduction

A. RFI/RFQ Obligation on the Requesting Agency and State

This Request for Information and Qualifications (“RFI/RFQ”) is a request for qualifications of interested vendors and information about the feasibility for statewide employer-sponsored (on-site or near site) clinics.

There will be no contract awarded as a result of this RFI/RFQ.

Nothing in the materials vendors provide as a reply to this RFI/RFQ, further referred to as “vendor’s response” or “response”, nor the State’s remarks, follow-up questions or replies to the response of any individual vendor, will be considered binding for a future contract. The use of the term “vendor” only infers a respondent to this RFI/RFQ.

B. Purpose/Background of Release of this RFI/RFQ

On behalf of the State Employee Benefit Committee (SEBC), the Office of Management and Budget’s Statewide Benefits Office (SBO) is seeking market information on the interest and capabilities of vendors along with the feasibility of offering employer-sponsored (on-site or near site) health clinics to select members of the State of Delaware’s Group Health Insurance Program (GHIP). The SBO invites vendors to submit their capabilities and interests relative to this RFI/RFQ. The SBO may reference this material as indicative of industry capabilities in the event the SEBC issues a Request for Proposal (RFP). Further, the information gathered may or may not lead to the issuance of a RFP. **This RFI/RFQ will not result in award of a competitively bid contract.**

To assist us in obtaining information about the qualifications and interest of vendors along with the vendors’ opinions of the feasibility of employer-sponsored (on-site or near site) clinics, if you choose not to respond we ask that you let us know the reason. We would appreciate your candor. Please email Ms. Laurene Eheman, the designated contact for this RFI/RFQ at laurene.eheman@state.de.us.

C. RFI/RFQ Designated Contact

All requests, questions, or other communications about this RFI/RFQ shall be made in writing via email, and only via email, to the person listed below as the Designated Contact, Ms. Laurene Eheman.

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. Direct contact with State of Delaware employees other than the Designated Contact regarding this RFI/RFQ process is

expressly prohibited without prior consent. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

Vendors should rely only on written statements issued by the RFI/RFQ Designated Contact:

State of Delaware, OMB
Statewide Benefits Office
Ms. Laurene Eheman, RFP and Contract Manager
97 Commerce Way, Suite 201
Dover, DE 19904
laurene.eheman@state.de.us
Direct: 302-760-7060
Office: 302-739-8331

However, the SBO's consulting firm, Willis Towers Watson, may contact you via email with clarifying questions about your response and you may communicate directly with them.

D. Supplemental Data Associated with this RFI/RFQ

Additional data is available to vendors that are interested in submitting a response to this RFI/RFQ. This includes a summary data on the number of State employees enrolled in medical coverage by State of Delaware worksite location and summary data on medical services utilization for State of Delaware employees. Vendors who are interested in accessing this data for the purpose of submitting a response to this RFQ/RFI may contact the Designated Contact, Ms. Laurene Eheman at laurene.eheman@state.de.us.

E. Response Format Requirements

Please review and follow the information and instructions contained in this section. Should you need additional information, please contact Ms. Laurene Eheman at laurene.eheman@state.de.us.

1. Cover Letter

Each response must have a cover letter on the letterhead of the company or organization submitting the response. Please provide the firm's name, home office address and telephone number, a brief summary of the vendor's ability to provide the services specified in this RFI/RFQ. Include the name and information for a primary *and* secondary contact, including their email addresses. Also include your company's website address.

2. Confidentiality

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 FOIA, 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. Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part

of the vendor's response will be treated as confidential during the evaluation process. There shall be no disclosure of any vendor's information in fulfillment of a FOIA request during the review process. However, if a presentation to the SEBC is made in public session, that information from the vendor's presentation is considered public information.

If a decision is made by the SEBC to move forward with a Request for Proposal, the information in the responses to this RFI/RFQ will remain confidential until a contract has been fully executed or after the effective date of the contract, whichever comes later. The contents of the bids and terms of the contract, including administrative fees, will become public record and nothing contained in the bid or contract will be deemed to be confidential except the proprietary information that was deemed as such in the RFI/RFQ response and RFP bidding process.

3. Process to Request a Confidential and Proprietary Determination

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. Responses must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their response without including confidential business information, they must adhere to the following procedure or any applicable protection for the vendor's confidential business information may be lost.

!! IMPORTANT!! 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 response as confidential business information. In order to preserve the confidential and proprietary status of the appropriately designated portion of your response, it must be submitted in accordance with the submission requirements stated below.

In a separate, sealed envelope labeled "Confidential and Proprietary Information" with the RFI/RFQ name, include:

- a. A signed letter from the vendor's legal counsel describing the documents (page[s] in the response) 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 the information in each document meets the said definitions. In your letter, please list the topic and corresponding question with a reference to that section, number, question and page number, not just the titles of the appendices, exhibits or question numbers.
- b. The vendor must also submit one hard copy set of those same pages or documents that are *not* redacted pages.

Upon receipt of a response 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 State 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 response 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 response may enter the public domain.

All documentation submitted in response to this RFI/RFQ and any subsequent requests for information pertaining to this RFI/RFQ shall become the property of the State of Delaware, OMB, and shall not be returned to the responding firm. All responding firms should be aware that government solicitations and responses are in the public domain. **If your response contains the phrase “confidential and proprietary” on each page, such status will not automatically be granted.**

4. Organization of Your Response

Please provide responses in a Word or Excel document and a pdf document format. For the pdfs, please do not provide one pdf document for the entire response. Provide separate pdfs in manageable sections. Please clearly label any attachments and appendices. Three-ring binders are preferred.

5. Copies

Each response package must be submitted with four (4) paper copies and one (1) electronic copy on a CD. A disc is preferred to a flash drive.

If you are asserting confidential and proprietary privilege, please follow Section I.E.2. – *Response Format Requirements, Confidentiality*, for the documents that must be in the sealed envelope – attorney’s letter and set of referenced non-redacted hard copies.

Additionally, one complete (1) hard copy of the entire response must be provided with redactions along with an electronic copy on a CD.

To review:

!!! IMPORTANT !!!

Response Formats	Hard Copies	Electronic Copies on Separate CDs
Confidential and Proprietary Information: One set of non-redacted hard copies along with the attorney’s cover letter in a marked and sealed envelope.	1	1
Complete response <u>with</u> redacted sections in PDF <i>and</i> Word versions	1	
Complete response <u>without</u> redacted sections	3	1

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

6. Response Submission

Responses are to be delivered to the Statewide Benefits Office and received no later than 1:00 PM EST (Local Time) on Monday, April 24, 2017, to the Designated Contact:

State of Delaware, OMB
Statewide Benefits Office
Ms. Laurene Eheman, RFP and Contract Manager
97 Commerce Way, Suite 201
Dover, DE 19904
laurene.eheman@state.de.us
Direct: 302-760-7060
Office: 302-739-8331

7. Response Opening

To document compliance with the deadline, the responses will be date and time stamped upon receipt. Any response received after the date and time deadline referenced above cannot be accepted and shall be returned unopened. Responses will be opened only in the presence of State of Delaware personnel. There will be no public opening of responses. Responses become the property of the State of Delaware at the response submission deadline.

II. Background

On behalf of the State Employee Benefit Committee (SEBC), the Office of Management and Budget's Statewide Benefits Office (SBO) is seeking market information on the capabilities and interest of vendors along with the feasibility of offering employer-sponsored health clinics to select members of the State of Delaware's Group Health Insurance Program (GHIP).

For complete information about the State of Delaware's GHIP, please go to <http://ben.omb.delaware.gov>.

Public notice has been provided in accordance with 29 Del. C. § 6981. This RFI/RFQ is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov. Paper copies of this RFQ/RFI will not be available.

A. Structure of the GHIP

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 Delaware State Education Association 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 drug, dental, vision, disability, life, flexible spending accounts, wellness and disease management programs, pre-tax commuter benefits, and supplemental benefits. Visit <http://ben.omb.delaware.gov> for information about the programs.

The SBO administers the Group Health Insurance Program (GHIP). Enrolled in the GHIP are approximately 124,000 active and retired employees of the State of Delaware and their dependents, including approximately 18,000 employees, retirees and their dependents from groups that also participate in the GHIP as permitted through Delaware Code. Eligible participants include active, retired, school district, charter school, university, community college, non-state groups, and COBRA participants and their enrolled dependents. Plan participants are primarily located within the State of Delaware, although a small number of participants reside in other states and countries. There are multiple employer units and non-payroll groups located in three counties throughout the State, with each exercising a high degree of independence.

The SEBC contracts with Ceridian for administration of COBRA and with Human Management Services (HMS) for administration of employee assistance services. The medical insurance component of the GHIP is self-insured and is administered by Aetna and Highmark of Delaware. Pharmacy Benefit Manager (PBM) services are carved out and administered by Express Scripts. The dental and vision benefit plans are 100% employee

pay-all and are not included with the health plan. The State of Delaware utilizes multiple electronic human resources programs, such as PeopleSoft, and vendor databases at separate locations in various formats to collect and store participant data.

B. Interest in Employer-Sponsored Health Centers

The SBO is seeking market information on employer-sponsored (on-site or near site) health centers to obtain a better understanding of the potential benefits that such an offering could provide to both the GHIP and its members. If the State were to move forward with an employer-sponsored health center at some point in the future, the following objectives outline the primary purpose of the health center, from the SBO's perspective:

- Expand access to care
- Improve quality of care
- Improve the health and wellbeing of the covered population
- Promote wellness and the importance of preventive care
- Drive greater engagement in care management programs
- Redirect care from expensive, suboptimal and inappropriate settings, when clinically appropriate
- Steer members to high performing providers and COEs
- Reduce the total cost of care for GHIP participants and the State

C. Scope of Services

1. Parameters and Preferences

For the purpose of administering this RFI/RFQ, the SBO has outlined preliminary preferences regarding the eligible population, scope of services, location and hours of operation, member cost sharing and staffing for an employer-sponsored health center. However, it is through this RFI/RFQ process that the SBO intends to refine its position and preferences related to employer-sponsored health centers. Therefore, to the extent that vendors responding to this RFI/RFQ have suggested approaches that vary from any of the parameters outlined below, the SBO encourages those vendors to provide that feedback as part of their response.

a. Eligible Population

Initially, only State of Delaware employees enrolled in medical coverage, of which there are approximately 36,000 employed on an active full-time or part-time basis, would be eligible to use this employer-sponsored health center. The SBO is open to considering expanding health center services to covered dependents (i.e., spouses and children which would expand the total to approximately 90,000) at some point in the future, if it makes financial and logistical sense to do so.

The chart below outlines the approximate number of employees enrolled in medical coverage by county in Delaware.

Delaware County	State employees enrolled in medical coverage
New Castle	16,321
Kent	8,738
Sussex	5,809
Total	30,868

Further details summarizing the number of enrolled employees by State of Delaware worksite location is available upon request from the State. Please see Section I.D – *Supplemental Data Associated with this RFI/RFQ* for further details.

State of Delaware employees have an average age of 46 years; nearly two thirds of the population is female (61%). While the State provides numerous health management and wellness programs through the GHIP, engagement is low among both employees and covered dependents. Preventive care screening rates are lower than HEDIS norms and the State’s prevailing chronic conditions and lifestyle risk factors are similar to other commercially insured populations (i.e., diabetes, hypertension, and hyperlipidemia). Over the last twelve months, the SBO has taken numerous steps to educate the employee population about health care consumerism and are about to roll out a medical plan decision support tool with the State’s upcoming Open Enrollment for the FY18 plan year (7/1/17 – 6/30/18).

Further details summarizing the utilization of selected medical services by State of Delaware employees is available upon request from the State. Please see Section I.D – *Supplemental Data Associated with this RFI/RFQ* for further details.

b. Scope of Services

The SBO is interested in the feasibility of offering the following scope of services through an employer-sponsored health center:

- Acute/Urgent care
- Preventive care
- Primary care for conditions that will resolve in 1-3 visits to the health center, i.e., not for ongoing chronic care management. The SBO prefers that the health center would make referrals to high quality community PCPs for ongoing management of chronic conditions.
- Routine women’s health care / GYN services, not to include obstetrics
- Lab services (CLIA-waived only, but will draw blood and collect specimens for non CLIA-waived tests and will send to national in-network lab of choice, i.e., Quest or LabCorp)

- Biometric screening
- Nutrition counseling
- Referrals to high quality, in-network providers
- Referrals to care management and EAP programs

In addition, the SBO is interested in evaluating the possibility of offering onsite behavioral health counseling and would like to understand vendors' capabilities, partnerships and experience in this area.

While the SBO is not interested in offering pharmacy services at the health center initially, it is interested in understanding any opportunities that exist to add pharmacy services at some point in the future. The SBO is open to vendor suggestions on the scope of pharmacy services that could be added over time (e.g., could be limited to short courses of commonly prescribed acute care medications).

c. Health Center Location and Hours of Operation

The SBO has not identified a specific location for the health center, but is interested in location recommendations based on the vendors' knowledge of the provider marketplace in Delaware and sites where the State of Delaware employees are located.

While the State of Delaware would most likely start with implementing only one health center, it would be open to scaling up the number of health centers offered over time, if a compelling business case can be made for additional health centers.

Due to the variety of work schedules required of State employees, the health center hours of operation should provide access for all eligible employees, including those who complete their normal working hours later at night or in the early morning. The State's eligible population includes school district, charter school and higher education employees who are not easily able to leave their workplace locations during the school day. In addition, a number of Executive Branch agencies, such as the Departments of Corrections, Safety and Homeland Security, and Services for Children, Youth and Their Families, have State employees working shift schedules in 24/7 facilities. The health center's hours should allow access for employees working on a variety of schedules throughout the week.

d. Member Cost Sharing

For the purposes of providing guidance on a common set of parameters to aid vendors in developing a response to this RFI/RFQ, vendors should develop responses that assume employees would have access to health center services at no cost to employees. However, the SBO is also interested in understanding the member cost sharing models that vendors have found to be most effective in driving engagement and utilization of the health center.

The State is continuing to evaluate its medical plans and may adopt greater member cost sharing for other medical services in the future. As a result, offering health center services at no or a very low cost may make use of the health center even more attractive in the future.

e. Health Center Staffing

The SBO is interested in vendor suggestions related to health center staffing that would deliver the scope of services outlined above with the highest clinical quality in the most cost effective manner. This RFI/RFQ seeks quotes for delivering these services under a proscribed model, as well as the respondent's proposed staffing model. Further instructions on staffing considerations are provided in Section IV.N – *Pricing, Performance Guarantees and ROI* of this RFI/RFQ.

2. Enhancements

!!! IMPORTANT !!!

Though, at minimum, the SBO's primary interest is a review and comment of the Scope of Services along with the qualifications of interested vendors, the SBO is interested in your firm's ability to provide health care solutions based on the description of the State's geography, population centers, and rural/urban locations through employer-sponsored (on-site or near site) clinics.

Therefore, though this RFI/RFQ has questions and requests to guide your response, vendors are asked to provide descriptions of any enhancements or additional services or qualifications your firm could provide that are not mentioned herein. Any enhancements shall be qualified and the vendor should identify why the enhancements suggested would improve a RFP offering. Vendors are encouraged to provide feedback with a summary case study to provide context. Suggested solutions that can be supported by successful implementation in a previous engagement will provide better context for their offered review.

III. Request for Qualifications

The following questions regarding your firm's qualifications and experience levels are requirements that would be mandatory in a Request for Proposal process, **if** a RFP would be issued. This response package must contain a detailed description of your firm's qualifications and experience in providing services. Failure to meet any of these minimum requirements may result in disqualification of a bid submitted by your organization, **if** a RFP would be issued. **Vendors are reminded that this RFI/RFQ will not result in a contract award, but the vendor qualifications and experience provide context to the quality of the feedback received.**

Directions:

Please respond to each question or statement. For lengthy responses in any section, please create an exhibit or attachment and reference it accordingly.

A. Core Capabilities and Experience

1. Vendor must have at least three (3) years' experience as an organization providing all of the services indicated in the Scope of Services (Section II.C). Please confirm and provide a concise outline of your organization's experience and qualifications.
2. Vendor must be able to offer health care to employees with a primary emphasis on personal health care; specifically this means:
 - a. Holistic approach to providing care to the eligible population
 - b. Proven ability to integrate with the relevant State of Delaware vendors (i.e., Aetna, Highmark Delaware, ESI, Truven) as it relates to providing health care and wellness services
 - c. Proven ability to promote increased and sustained utilization of preventive services
 - d. Proven ability to coach members on lifestyle and chronic conditions
 - e. Proven ability to lower cost of care for both employees and the State of Delaware, without sacrificing the quality of care delivered.
3. Vendor must be able to submit data (i.e., diagnosis and procedure codes) on medical encounters at the health center to the State of Delaware's medical third party administrators, Aetna and Highmark of Delaware.
4. Vendor must be able to integrate with the State's data warehouse provider, Truven Health Analytics, and the Delaware Health Information Network. For more information about

the Delaware Health Information Network, please see the following website:
<http://dhss.delaware.gov/dhss/dhcc/dhin.html>.

5. Vendor must provide comprehensive utilization, trend and cost management reports on a regular basis and be willing to meet with the State and its advisors on-site at least quarterly to review performance according to the performance guarantees along with health center utilization and outcomes.
6. Vendor must be willing to offer dedicated and experienced resources for account management, customer service, analytic and clinical consultative resources, and to support implementation to ensure a smooth roll-out for eligible members.
7. Vendor must administer a program that maintains robust quality assurance and care management guidelines.
8. Compared to the marketplace, vendor must deliver competitive terms and pricing that will sustain a multi-year contract.
9. Vendor must be willing to agree to clearly stated contract provisions and performance guarantees that drive excellent service, satisfaction and performance for the SBO as well as for eligible members.
10. Vendor must be willing to be held accountable (i.e., through performance guarantees) for acting in the interest of the State and GHIP participants.
11. Vendor must be able to provide and maintain the staffing levels, furnishings, fixtures and equipment, medical and office supplies, and an IT platform, including an electronic medical record and practice management functionality, necessary to support the scope of services.

B. Contractual Requirements Pertaining to a Subsequent RFP (if issued)

The following identified contractual requirements related to any RFP that might be issued subsequent to this RFI are provided so that respondents to this RFI might have the opportunity to provide comment on such requirements.

Again, respondents are reminded that this RFI/RFQ will not result in a contract award, but the State would like to collect information in this RFI process concerning the ability or willingness of vendors in this market space to comply with prevailing contractual requirements associated with procurements of the nature described in this RFI. Please confirm that should the State ultimately issue an RFP whether or not your organization would comply, and if not, provide redlines or an explanation:

1. **It would be required for your organization to accept this indemnity term as written, both generally and for data security breaches.**

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.

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

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

2. A specific contract term would be determined.
3. The State expects exceptional client account management and participant customer service from their vendors and would require financial and non-financial performance guarantees. The State would reserve the right to negotiate both financial and non-financial performance guarantees.
4. The State would require that your organization confirm that all services identified in your response are provided solely by your organization and identify any services that may be provided by a subcontractor. This includes graphics, mailing, and printing services, for example. Subcontractors are subject to all the terms and conditions of an RFP and the State would reserve the right to approve any and all subcontractors.
5. The State requires that 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. If your business model would require eligibility and claim data feeds, a data storage center cannot be located offshore. Subcontractors would also be subject to this provision.
6. If it is your business practice to engage services from any person or agency to secure or execute any of the services outlined in an RFP, any commissions and percentage, contingent, brokerage, service, or finder's fees would need to be included in your proposed fee. The State will not pay any separate brokerage fees for securing or executing any of the services outlined in an RFP. Therefore, all proposed fees would be required to be net of commissions and percentage, contingent, brokerage, service or finders' fees.

7. Your company would be required to comply with all federal, state and local laws applicable to its activities and obligations including:
 - a. the laws of the State of Delaware;
 - b. the applicable portion of the Federal Civil Rights Act of 1964;
 - c. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
 - d. a condition that the response submitted was independently arrived at, without collusion, under penalty of perjury; and
 - e. that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.
8. Your company would be required to be appropriately licensed to do business in the State of Delaware and provide a copy of the license.
9. During the term of the contract, your organization must, 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

Your company must carry (a) and (b) and/or (c), above, as it would apply to the type of service being delivered. (The State of Delaware cannot **not** be named as an additional assured.)

10. Your organization would be required to enter into a *Business Associate Agreement*, Appendix C, which would be incorporated by reference in a contract.
11. If your solution requires data feeds, either eligibility and/or claim files, the State has stringent security requirements. In order to be considered, your organization must be prepared to agree to these data safeguards.

A. Electronic Data Transfer:

Be able to accept and transmit data. For example:

1. Inbound enrollment files in the HIPAA 834 file layout;
 2. Outbound claim files to the State's vendors - Truven Health Analytics, Highmark, Aetna for data mining analytics and care management.
- B. Third Party Agreements:
It would be necessary to enter into third party agreements before data exchanges can take place.
- C. Security and Encryption:
1. The SANS Institute and the FBI have released a document describing the *Top 20 Internet Security Threats*: <http://www.sans.org/critical-security-controls/>. Your organization would need to confirm that any systems or software provided by the contractor are free of the vulnerabilities listed in that document. (A response that security threats are always changing would not be acceptable.)
 2. The requirement of at least ten (10) characters in a password would be strongly preferred but not required. It would be applicable for external access to the vendor's secure website by members/participants (if applicable) and the Statewide Benefits Office personnel for account management activities (if your system has that capability). It is not a requirement for your organization's internal data access system. For reference, the policy document is located at: <http://dti.delaware.gov/pdfs/pp/StrongPasswordStandard.pdf>
 3. Your company would be required to use a secure encryption system to transmit confidential Delaware data via email. For reference, the policy document is located at: <http://dti.delaware.gov/pdfs/pp/SecureEmail.pdf>
 4. It is the State's preference that confidential Delaware data will not be accessible on a mobile devices, but if so, your company would be required to use a secure encryption system. For reference, the policy document is located at: <http://dti.delaware.gov/pdfs/pp/MobileDeviceEncryptionStandard.pdf>
- D. Terms and Conditions
The requirements in Appendix A - *Non-Public Data - State of Delaware Cloud and/or Offsite Hosting Mandatory Terms and Conditions* – would be required. DTI will not allow changes to a term as it is written on their document, therefore the footnotes contain additional information or instructions which may apply to the management of employer-sponsored (on-site or near site) clinics. This form is attached for your reference only.
- E. Data Confidentiality Agreement
If your company does not already exchange eligibility and claims data with the State, a *Data Confidentiality Agreement*, Appendix B and attached for your reference only, would be required to be signed by your organization (and any applicable subcontractor[s]) for the purpose of exchanging test data before the effective date of

the contract. The *Terms and Conditions* form is an attachment to the *Data Confidentiality Agreement*.

IV. Request for Information

Vendors are reminded that this RFI/RFQ will not result in a contract award.

Directions:

Please respond to each question or statement. For lengthy responses in any section, please create an exhibit or attachment and reference it accordingly.

A. Company Profile

#	Question	Response
1.	Please provide a brief history of your company. Include a summary of your status with respect to any past (within the last five (5) years), current, or prospective mergers and acquisitions. In addition, please describe your strategy towards growth and any immediate plans for expansion both nationally and in the State of Delaware.	
2.	Please provide an organization chart showing your company's parent / subsidiary hierarchy or general / limited partner relationship.	
3.	Describe any current relationship(s) with the State of Delaware, including current services / goods provided to State of Delaware, as well as goods / services provided by State of Delaware to your organization.	
4.	Provide the following information about your company:	
	a. Number of years in business	
	b. Location of company headquarters and regional offices (if applicable)	
	c. Website address	
	d. Is the company privately or publicly held?	

#	Question	Response
	e. Location and date of incorporation	
5.	Provide the following financial information about your company, specific to employer-sponsored health centers:	
	a. Exact company name used on financial filing	
	b. Total revenues 2015	
	c. Total revenues 2016	
6.	Confirm that you maintain at all times adequate liability insurance to cover all of your liability under any customer contract, and provide your current aggregate and individual coverage thresholds.	
7.	Please provide a copy of your sample client contract.	

B. Company Information

#	Question	Response
1.	Report the number of employer-sponsored health centers your company operates in the United States and in each of the following states:	
	a. United States	
	b. Delaware	
	c. Pennsylvania	
	d. Maryland	
2.	Report the number of employer-sponsored health centers that your company operates for state, county and municipal governments.	
	a. Describe any special circumstances related to state governments that would need to be considered.	

#	Question	Response
3.	Within the past two years, how many clients has your company lost?	
	a. Provide reasons why the client(s) were lost.	

C. Company Employees

#	Question	Response
1.	Total number of employees	
2.	What is your annual attrition for employees who work at your clients' health center locations? (as a percentage of total in this category)	

D. Implementation Support

#	Question	Response
1.	Outline the implementation plan and timeline. Include all critical tasks, responsible parties, target completion dates, frequency of meetings and differences between your implementation team vs. an ongoing operations team. Clearly identify the role of the client for critical tasks and the estimated time requirement, in hours, for client contacts.	

E. Member Experience and Engagement

#	Question	Response
1.	Describe your patient check-in and check-out process to optimize the patient experience.	
2.	Describe other ways you would optimize the patient experience and engagement within the employer-sponsored health center.	

F. Staffing

#	Question	Response
1.	What is the average tenure of your providers?	
2.	Outline your recommended staffing model and staffing levels for the State of Delaware’s desired scope of services, including any additional management and administration staff.	
3.	What hours of operation do you recommend for the State of Delaware’s health center?	
4.	What is your approach to referrals to outside providers? Can you confirm that all providers in the referral network are in-network providers of a client’s health plan?	
5.	Where and when would you involve a client in the recruitment and selection process of health center staff?	
6.	What is your contingent plan and process for maintaining a staffing pool to fill in for planned and unplanned absences?	
7.	How do you ensure that all health center staff (both regular full-time/part-time and contracted/temporary) are covered by the requisite medical liability insurance?	

G. Operations

#	Question	Response
1.	Describe your approach to managing both scheduled and walk-in patients. Provide details on your care standards regarding waiting room time and appointment time spent with patients. Clearly outline the average waiting time in the health center to see a provider as well as the average wait time to schedule an appointment.	
2.	Per Section II.C. – <i>Scope of Services</i> , the SBO is interested in evaluating the possibility of offering behavioral health counseling at the health center. Please describe your capabilities and experience in this area.	
3.	Per Section II.C. – <i>Scope of Services</i> , while the SBO is not interested in offering pharmacy services at the health center initially, it is interested in understanding any opportunities that exist to add pharmacy services at some point in the future. Please describe your suggestions on the scope of pharmacy services (e.g., could be limited to commonly prescribed and acute care medications) that could be dispensed at the health center.	
4.	Describe the general health education that you provide to patients, along with your recommendations specific to the State of Delaware for health educational campaigns and other support you could provide.	

#	Question	Response
5.	<p>Per Section II.C. – <i>Scope of Services</i>, for the purposes of providing guidance on a common set of parameters to aid vendors in developing a response to this RFI/RFQ, vendors should develop responses that assume employees would have access to health center services at no cost to employees. However, the SBO is interested in understanding the member cost sharing models that you have found to be most effective in driving engagement and utilization of employer-sponsored health centers. Please provide examples of the employers that have been most successful in providing employer-sponsored health care to their population and comment on their member cost sharing arrangements. Success can be defined as high levels of engagement, improvement in clinical outcomes, greatest ROI, etc. Include in your response lessons learned and commentary on plan designs and/or other variables that led to those outcomes. Please also describe how health center cost sharing compared to member cost sharing for similar services delivered through the medical plan outside of the health center (e.g., at a PCP) and how engagement/utilization was positively impacted as a result. Please include case studies where possible.</p>	

#	Question	Response
6.	<p>Understanding that the State of Delaware may offer an HDHP with an HSA at some point in the future, describe your recommended approach and fee schedule options for member payment of services at the employer-sponsored health center (i.e., co-pay, deductible, incentives) and a recommended dollar amount as the market average cost of a visit, if available.</p>	
7.	<p>Based on what you know about the provider marketplace in Delaware and the geographic distribution of State of Delaware employees' work locations:</p> <ol style="list-style-type: none"> a. Where would you recommend the State opens its first employer-sponsored health center? b. What would you recommend as the hours of operation? <p>Your response should take into account any and all relevant considerations for the local provider marketplace, including but not limited to the following examples:</p> <ol style="list-style-type: none"> o In New Castle County, where there's a large concentration of State employees, would it make more sense to direct employees to an urgent care provider instead of an employer-sponsored health center, especially if the provider marketplace is fairly saturated and access to care isn't a large issue? o In Sussex County, where access to care is more limited, would it make more sense for the State to establish its first employer-sponsored health center there in order to expand access to care? 	

H. Integration

#	Question	Response
1.	Indicate your experience integrating with the following vendors:	
	a. Aetna (Medical)	
	b. Highmark (Medical) (specify which state(s) served, e.g., Delaware, West Virginia)	
	c. Express Scripts (PBM)	
	d. Truven (data warehouse)	
	e. Human Management Services (EAP)	
	f. Teladoc (for Aetna members)	
	g. American Well (for Highmark members)	
	h. Doctors on Demand (for Highmark members)	
2.	Do you have data feeds already in place with the above organizations if you were to integrate with them on behalf of the State of Delaware? Please describe.	
	a. What and how do you charge for establishing and/or operating such feeds?	
3.	Do you require an eligibility file from your clients?	
4.	Do you require any other files or data in order to integrate with your clients' third party medical vendors to support care management and/or wellness programs?	

I. Technology

#	Question	Response
1.	What features and functions of your technology platform for employer-sponsored health centers are currently available? If they are not currently available, do you have plans for implementation and in what timeframe?	
	a. Online appointment scheduling, reminders, push notifications	
	b. Scheduling of audio and / or virtual telemedicine consults / visits by employer-sponsored health center providers	
	c. Employee and patient registration and eligibility	
	d. Coding for service delivery	
	e. Maintaining IRS-compliant HSA fee schedules and patient billing	
	f. Third party billing, submission, collection and tracking	
	g. Practice/Operation financial statements & general ledger	
	h. Inventory	
	i. Employee staffing and scheduling	
	j. Track patient waiting times (e.g., in the waiting room, triage and with the provider)	
	k. Health center workflow management and messaging	
2.	Do patients have the ability to fill out forms online ahead of their appointment?	

#	Question	Response
3.	Describe your capabilities to submit data on member encounters to the State’s medical TPAs (i.e., “shadow” claims with diagnosis and procedure coding but with payment data suppressed) so that data can be included in the encounter data that those vendors report to the State as well as the State’s data warehouse partner, Truven Health Analytics.	
4.	Describe any ability to receive data such as patient acuity information and health risk assessment results directly into the patient’s Electronic Medical Record (EMR) for provider use.	
5.	Describe any additional technology capabilities of which you would like to inform the State of Delaware.	

J. Reporting

#	Question	Response
1.	Confirm your ability to report on the following metrics for an employer-sponsored health center:	
	a. Total eligible population	
	b. Number of medical appointments	
	c. Number of wellness appointments	
	d. Primary care utilization	
	e. Visit reason (e.g., urgent care, primary care, screening, lab)	
	f. Health services utilization	
	g. Referrals to community providers (primary care and specialist), medical plan providers (in- and out-of-network), and State of Delaware health management programs	

#	Question	Response
	h. Estimated savings (direct cost-avoidance and other legitimate savings sources)	
	i. ROI (using a mutually agreed-upon methodology)	
	j. Estimated productivity savings	
	k. Vendor contract costs	
	l. Additional costs	
	m. Average time to schedule an appointment	
	n. Average time to complete appointment	
	o. Average wait time	
	p. Unique users	
	q. Unique primary care users	
	r. Number of visits for unique users	
2.	Which of these factors do you use to measure and report on program success?	
	a. Direct claim cost	
	b. Claim cost avoidance	
	c. Productivity / lost time	
	d. Client satisfaction	
	e. Member satisfaction	
	f. Utilization data	
	g. Health outcomes	
	h. Other	
3.	How do you measure patient satisfaction with the employer-sponsored health center? Please provide a sample of your patient satisfaction questionnaire.	
4.	Please provide a copy of your standard management reporting package.	

K. Wellness

#	Question	Response
1.	Describe how you integrate wellness into an employer-sponsored health center, both with internal wellness initiatives and with a client's other vendor partners.	
2.	Please provide a client case study in which you and your client were able to leverage an employer-sponsored health center to drive engagement in client's wellness or health management program. Please describe the wellness or health management program and the role that the health center played in driving engagement. Please also discuss engagement rates and/or outcomes pre and post intervention by the health center. If your client made any plan design changes to support improvements in engagement and/or health outcomes, what were they?	

L. Communications

#	Question	Response
1.	Describe the communication materials and support you provide to assist with promoting an employer-sponsored health center.	

M. Other

#	Question	Response
1.	What is your overall value proposition for why an employer would partner with you to administer its employer-sponsored health center? What makes your offering innovative?	

#	Question	Response
2.	What is the current utilization for your book of business: (1) overall for all employer-sponsored health centers, (2) with <i>onsite</i> health centers, and (3) with <i>near-site</i> health centers?	
3.	Are you willing to work with an architectural firm of a client's choosing or do you require that the client work with your architectural firm?	
4.	Describe how you would partner with a client's facilities management and contractor(s) to construct and build-out a clinic space. Have you had experience with leading the construction and build-out efforts, in particular when a client has not had the internal resources and/or bandwidth to support a clinic build-out? Which of these is your preferred approach to addressing this portion of the implementation process?	
5.	Please provide descriptions of any additional services or qualifications your firm could provide that are not mentioned herein. Please describe why the enhancements suggested would improve an RFP offering. Vendors are encouraged to provide one or more summary case studies as examples of how these additional services or qualifications added value to other customers. Solutions that can be supported by successful implementation in a previous engagement are preferred.	

N. Pricing, Performance Guarantees, and ROI

Please provide three quotes for implementation and ongoing operations of a health center sponsored by the State of Delaware under the three difference scenarios outlined below, and based on the following criteria common to all scenarios:

Scenarios

1. Scenario 1 –

- a. Please assume that the health center will be staffed with a Medical Doctor (MD) as the primary clinician, with additional clinical and administrative support staff as outlined in Appendix D – *Financial Quote Template*, tab labeled “Financial Template – MD”.
- b. For the purposes of providing guidance on a common set of parameters to aid vendors in developing a quote, and given that the potential location of an employer-sponsored health center has yet to be determined, please base your clinic visit volume forecast, other fees and savings estimates on the estimated eligible employee headcount for Kent County, Delaware, which has been pre-populated in the Financial Quote Template.
- c. Please base your quote on the other parameters outlined in Section II.C – *Scope of Services*, such as the eligible population, scope of services, hours of operation, and member cost sharing.

2. Scenario 2 –

- a. Please assume that the health center will be staffed with a Nurse Practitioner (NP) or Physician’s Assistant (PA) as the primary clinician, with additional clinical and administrative support staff as outlined in Appendix D – *Financial Quote Template*, tab labeled “Financial Template – NP | PA”.
- b. For the purposes of providing guidance on a common set of parameters to aid vendors in developing a quote, and given that the potential location of an employer-sponsored health center has yet to be determined, please base your clinic visit volume forecast, other fees and savings estimates on the estimated eligible employee headcount for Kent County, Delaware, which has been pre-populated in the Financial Quote Template.
- c. Please base your quote on the other parameters outlined in Section II.C – *Scope of Services*, such as the eligible population, scope of services, hours of operation, and member cost sharing.

3. Scenario 3 –

- a. Please provide a quote based the staffing, scope of services, hours of operation and member cost sharing that you would recommend to the State given your experience and view of best practices in the marketplace, as well as the common criteria outlined below.
- b. Please include in this scenario your recommendation of where an employer-sponsored health center could be located for the State.

The following criteria are common to all scenarios:

- For each scenario, please use grids within Appendix D – *Financial Quote Template* to clearly outline your proposed pricing, including implementation costs (space remodeling/build-out, staffing, IT, equipment, medical and office supplies, other capital expenditures), ongoing operating costs, and management fees.
- Please provide a fee quote specific to a “cost-plus” financial model, whereby the State would be invoiced monthly for all health center operational costs, plus a management fee; if member cost sharing were introduced at some point in the future, the health center would collect member cost share at the time of visit and remit the total amount collected back to the State (either as an offset to operational costs or as a direct payment to the State).
- The health center would be expected to submit data on member encounters to the State’s medical TPAs (i.e., “shadow” claims with diagnosis and procedure coding but with payment data suppressed) so that data can be included in the encounter data that those vendors report to the State as well as the State’s data warehouse partner, Truven Health Analytics.
- Also include your estimated savings/ROI associated with each quote. Please include specific details on all assumptions and calculations that you used to arrive at your savings/ROI estimates.

#	Question	Response
1.	Please confirm that you have completed Appendix D – <i>Financial Quote Template</i> and have attached it to your response as a separate exhibit.	
2.	Could you offer a three-year guarantee of flat fees with no escalation?	

#	Question	Response
3.	Do you require payment for certain services either before implementation begins or before the health center goes live? If so, please describe which services would require payment, the approximate range of costs for those services and explain why your business model requires funding in advance for these services.	
4.	Since a location for an employer-sponsored health center has not been identified for the State of Delaware, based on your experience implementing other employer-sponsored health centers, can you comment on the range of average build-out cost per square foot for a health center in each of the following scenarios:	
	a. If the State were to start with an empty lot (i.e., need to dig a foundation). Please feel free to quote on a prefabricated solution if you have one.	
	b. If the outer walls of a space existed, but certain elements such as plumbing, HVAC, etc. would need to be roughed in.	
	c. If the internal space was built out (i.e., was an office previously) but would need to be modified to suit the State's needs for a clinic.	
5.	Please describe on the nature and timing of all payments you would require after go-live.	

#	Question	Response
6.	Please describe your experience and capabilities in administering a range of pricing methodologies for your other clients' health centers, e.g., cost-plus, capitation (PEPM), fee-for-service, fixed fee, and any other alternatives. Which of these would you recommend for the State, and why?	
7.	Please confirm that you would be willing to place substantive performance guarantees with associated fees at risk around the following:	
	a. Appointment wait times	
	b. Budgetary adherence: adhere to proposed implementation, operating and expense budget	
	c. Ability to recruit and hire staff within certain timeframes	
	d. Health center staff retention	
	e. Compliance with evidence based medicine	
	f. Health center visit utilization	
	g. Population penetration rates	
	h. Economic return / ROI	
	i. Improvements in downstream utilization, e.g., reduced ER visits, reduced unnecessary admissions	
	j. What sort of improvements in clinical metrics and financial savings can generally be expected in the first year of operating an employer-sponsored health center?	
8.	How long does it generally take for an employer-sponsored health center to produce a return on investment (ROI)?	

#	Question	Response
9.	How do you calculate ROI for your customers, and how frequently is this measured and reported to your customers?	
10.	What sort of caveats would you add to your savings estimate for the State of Delaware, given the proposed scope of services and other operational considerations outlined in Section II.C – <i>Scope of Services</i> ?	
11.	Please provide a case study for one of your customers that was able to achieve a positive ROI for their health center for a dispersed workforce (as opposed to concentrated in one location). How did this customer drive utilization of the health center (i.e., communications, plan design incentives, etc.) to successfully drive the ROI results achieved?	

V. Appendices

(continued on next page)

Appendix A: Non-Public Data - State of Delaware Cloud and/or Offsite Hosting Mandatory Terms and Conditions

Data Owned by the State – Self-Funded Plans

For Reference Only

1. **Data Ownership**¹: The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The Service Provider (Contractor) 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.
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. 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.
 - 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.
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. It is explicitly forbidden for the primary contractor or subcontractor staff to “share” access privileges. 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 and servers that store Delaware data cannot be located offshore.²

¹ The State’s GHIP is self-funded, therefore the ownership of the data remains with the State.

² However, if a call center or claims processing office, for example, is located offshore, the transmission of data via secured means is acceptable if the secure transit mechanism that you are asked to describe is approved by the State. Describe your organization’s relationship with any offshore staff, either as employees of your company or that of any subcontractor. State

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>
<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 coverage³ 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.

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

the scope (number and location) of the personnel, their role, and the process of data exchange, including a description of the data security measures.

- ³ The level of coverage is determined by the number of enrolled lives at \$158 each. For this engagement of 36,000 eligible lives, \$5,688,000 of coverage would be required. Depending on the contract(s) and plan designs awarded, proof of insurance is required at the time of award. If you have cyber liability insurance coverage (even if you have encryption-at-rest), please provide a copy as an exhibit. Please see the table at the end of this appendix for the number of coverage lives per plan design and coverage level.

at least three (3) years⁴, 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.

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.⁵
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:**⁶ 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

⁴ **Three years is non-negotiable.**

⁵ This includes Freedom of Information Act (FOIA) requests.

⁶ The State acknowledges that the ninety (90) day requirement is not applicable to insurance products. That timeframe is replaced with the following: Service Provider will retain the data for business processing reasons, such as claims run-out for twelve (12) months or until federal regulatory or Delaware Insurance Code requirements have been satisfied. The State of Delaware acknowledges that, pursuant to 42 CFR 423.505, the Center for Medicare Services (“CMS”) requires retention for the current year plus ten (10) years.

unique data retrieval arrangement has been established as part of the Service Level Agreement⁷.

- 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>
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.
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>
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.
11. **Contract Audit**: The Service Provider shall allow the State of Delaware to audit conformance including contract's terms⁹, 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.
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

⁷ A service level agreement is defined as a contract.

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.

⁹ This would be only for the technology and data security terms in the contract.

agreement with the Service Provider, who will be involved in any application development and/or **operations**.¹⁰

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. 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

¹⁰ In order to comply with the requirement for “operations”, any company that **delivers technology services** for the State’s account would have access to the data and therefore is subject to all the requirements in this Section. Examples would be claims processor(s) and companies that lease a software platform with data storage. The company must provide their business information with a detailed description of the services provided on a signed Subcontractor form and respond to the requirements in the entire *Technical Standards and Security Requirements* section with applicable appendices in a separate document. Please confirm your understanding of this requirement, list the subcontractor’s business information, and describe in detail the technology services that would be provided including how the data is accessed.

Appendix B: Data Confidentiality Agreement

Data Exchange for Enrollment in the Group Health Insurance Plan

For Reference Only

This Data Confidentiality Agreement (“Agreement”) is undertaken and effective on the date of the State Employee Benefit Committee (SEBC”) award on _____ pursuant to the parties’ performance of a certain contract (“Contract”) effective July 1, 20__, by and between the State of Delaware (“State”) by and through the Office of Management and Budget (“OMB”) on its own behalf and on behalf of the group health plan it sponsors for employees, retirees, and other covered persons, collectively referred to hereafter as “Covered Persons”, and _____ (“Contractor”) with offices at _____, (“Parties”).

WHEREAS, the State issued a Request for Response (“RFP”) for a _____ on _____, 20__;

WHEREAS, in order to implement enrollment by the Covered Persons, the State and Contractor must exchange test and enrollment files prior to the effective date of the Contract;

WHEREAS, Contractor desires to provide such data technology services to the State on the terms set forth in the Request for Response and as stated below;

WHEREAS, the information provided by the State is classified as Personally Identifiable Information (PII) and is information that, if divulged, could compromise or endanger the people or assets of the State and is data that is specifically protected by law; and

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

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

1. The RFP provides for a data extract by and through Payroll Human Resources Statewide Technology (“PHRST”) and the Pension Office (hereafter “State”) to be provided to the Contractor to be used for implementation testing and enrollment.
2. The enrollment files generated by the State will be placed in a sub-folder on the State’s SFTP server. The Contractor is responsible to obtain the files from the server.
3. The RFP requires that the Contractor accept the enrollment files in specified formats.
4. The data is to be used for the following purposes and is not to be used for any other purpose.
 - a. To populate the Contractor’s test environment; and

- b. To populate the Contractor's system so that the Covered Persons may elect the benefit and/or plan design via the State's secure website during the Open Enrollment term in May, 20__.
5. No clause of this Agreement shall be considered a waiver of any portion of the terms set forth in the RFP for which a Contract has been awarded to the Contractor. The terms of the document entitled *Non-Public Data - State of Delaware Cloud and/or Offsite Hosting Mandatory Terms and Conditions*, which is part of the RFP and a copy of which is attached hereto for reference, shall apply to the test and enrollment files to be provided by the State prior to the effective date of the Contract.

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

Appendix C: Business Associate Agreement

For Reference Only

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

In the performance of services on behalf of the Plan pursuant to the Contract, and in order for Contractor to use, disclose or create certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below), Contractor is a Business Associate of the Plan as that term is defined by the Health Insurance Portability and Accountability Act of 1996, including the modifications required under the American Recovery and Reinvestment Act of 2009 (“ARRA”), and its implementing Administrative Simplification regulations (45 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, or as authorized by a Covered Person.
2. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the Contract and this BA Agreement, Contractor will disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Plan. Other than disclosures permitted by this Section II or as otherwise specifically identified in the Contract, Contractor will not disclose Covered Persons' PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.
3. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons' PHI to Plan Sponsor, except as permitted by and in accordance with Section VII or as otherwise specifically identified in the Contract.

III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR

- A. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
- B. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BA Agreement.
- 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 Contractor's 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 VII, all disclosures of PHI from Contractor pursuant to the Contract shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.
- B. Summary Health Information.** Upon Plan Sponsor's written request for the purpose either to, (a) obtain premium bids for providing health insurance coverage for the Plan, or (b) modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.
- 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 non-conflicting 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.