



State of Delaware  
Office of Pensions

Request for Proposal

For

**Delaware Public Employees' Retirement System ("DPERS") Financial  
Statement Audits and Schedules of Employer Allocations and Pension Amounts**

Professional Services

November 1, 2019

by

State of Delaware  
Office of Pensions  
McArdle Bldg.  
860 Silver Lake Blvd., Suite 1  
Dover, Delaware 19904

**Bid Number:** OMB-20-126 Financial Statement Auditor

**Bid Closing:** December 6, 2019

**Deadline to Respond: 3:00 p.m. (EST), December 06, 2019**

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**Executive Summary**

The Delaware Public Employees Retirement System (“DPERS”) is issuing this Request for Proposals (“RFP”) for financial audit services by and through the Board of Pension Trustees (the “Board”), the Board’s Audit Committee (“Audit Committee”) and the Office of Pensions (“OPen”). DPERS was created under 29 Del. C. § 8308, and is responsible for the investment, administration and management of nine retirement pension plans for State, County and municipal employers. At the end of Fiscal Year 2018, total active members and pensioners were 78,916, and funds from the nine plans, three post-retirement trusts and one investment pool were commingled in a total System of \$10.4 billion. The Board has delegated certain oversight and review of audit related functions to the Audit Committee. OPen is the Delaware agency charged with the administration of the DPERS system. One of the responsibilities of the OPen is to issue monthly pension checks to members and insure their earnings and deduction information is accurate. OPen also provides retirement counseling for current and former employees.

This RFP will define the scope of the work to be performed, the requirements the selected public accounting firm must address, the method for response and the administrative requirements that must be followed. The RFP will be administered by OPen, at the direction of DPERS. OPen will advise potential proposers of changes to any dates as may be necessary. DPERS also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

**1. Introduction**

- 1.1 In accordance with 29 Del. C. Chapter 69, Subchapter VI, *Professional Services*, the Board, by and through OPen is publishing this RFP and seeking proposals (“Proposals”) from qualified certified public accounting firms (“Firms”) to perform an engagement in accordance with services described in this RFP at Section 4. Nature of Services Required, for each of the fiscal years ended June 30, 2020, 2021 and 2022.
- 1.2 There is no expressed or implied obligation for the Board to reimburse Firms for any costs or expenses incurred in preparing Proposals in response to this request, and the Board will not pay any costs or expenses incurred by any Firm associated with any aspect of responding to this RFP, including Proposal preparation, printing, delivery, or the negotiation process. Additionally, no indirect reimbursements (e.g., in the form of credits or reductions to any agreed upon compensation) will be made to any Firm by the Board for any such costs or expenses.
- 1.3 Public announcement of this RFP has been made in accordance with 29 Del. C. § 6981.
- 1.4 A mandatory pre-bid meeting has not been established for this RFP and is not required.

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- 1.5 This RFP is available electronically through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov). Paper copies of this RFP will not be provided by OPen.

If OPen determines that it is necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov). The terms of this RFP and any addenda are controlling and any statement related to this RFP made by any DPERS Board or Committee member, OPen staff, contractor, agent, State of Delaware employee, contractor, or agents does not bind the Board.

## 2. Proposal and Bid Submission Process

- 2.1 All questions regarding this RFP must be submitted in writing and must be received by 4:00 p.m. EST on November 08, 2019 via e-mail directly to the Board's Designated Contact:

David Craik  
Pension Administrator  
[OPenContracting@delaware.gov](mailto:OPenContracting@delaware.gov)

If a Firm is seeking clarification regarding a specific aspect of the RFP, the Firm must cite the section and page number for reference. Answers to all submitted questions will be posted on [www.bids.delaware.gov](http://www.bids.delaware.gov) in the same manner as this RFP by November 15, 2019.

- 2.2 The lowest bid is not the deciding or the most significant factor in awarding professional services contracts. Any Firm identifying contingencies will have its proposed cost adjusted in relation to others that do not include the contingency so that it is comparable from a cost perspective. Proposals that include sufficient details and realistic hours are likely to receive a higher score overall.
- 2.3 The *Minimum Requirements Section*, *Proprietary Section*, and *Cost Section* of the Proposal must be submitted in **three** separate PDF searchable files. The *Minimum Requirements* and *Proprietary Sections* can be submitted in the same email; however, the *Cost Section* of the Proposal must be submitted in a separate email. The two email subject lines should clearly state "**Minimum Requirements and Proprietary Sections**" and "**Cost Section.**" Proposals must be sent to [OPenContracting@Delaware.gov](mailto:OPenContracting@Delaware.gov) on or before **3:00 p.m. EST on December 06, 2019** (the "Submission Deadline"). Any Proposal received after the Submission Deadline will not be considered and will be rejected. The Firm bears all risk of delays in delivery.

Each Firm must also submit eight (8) paper copies of their proposal on or before 3:00 p.m. EST on December 06, 2019. Paper copies of the proposals may be delivered by Express Delivery (e.g. FedEx, UPS, etc.), U.S. Mail, or by hand delivery to:

David Craik, Pension Administrator  
860 Silver Lake Blvd, Suite 1

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OPen will provide an email response of acknowledgement for each email received.

A Firm may modify or withdraw its Proposal by written request, provided that both the request and Proposal are received by OPen prior to the Submission Deadline. Any changes, amendments, or modifications to a Proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment, or modification to a previously submitted Proposal. Changes, amendments, or modifications to Proposals shall not be accepted or considered after the Submission Deadline.

All Proposals shall become the property of DPERS, the Board, its Audit Committee and/or OPen upon receipt and are deemed firm offers at that time unless an amended Proposal is submitted prior to the Submission Deadline.

- 2.4 OPen will not conduct a public opening of Proposals but will maintain a public log of the names of all Firms that submitted Proposals. OPen's evaluation of the Proposals will begin shortly after the Submission Deadline.

All documents submitted as part of the Proposal will be treated as confidential during the evaluation process. As such, Proposals will not be available for review by anyone other than the Board's Proposal Evaluation Team or its designated agents, as well as the Board's legal counsel. The content of Proposals will not be disclosed unless such disclosure is mandated by the State of Delaware Freedom of Information Act, Title 29, Delaware Code, Chapter 100. Once a written Proposal is received by OPen and a decision on contract award is made, the content of selected and non-selected Proposals will likely become subject to FOIA's public disclosure obligations.

OPen expects to receive Proposals that include proprietary information, such as services that may not be provided by other Firms. The Firm must include this information in the Proprietary Section of the Proposal.

A Firm's statement or position as to the confidentiality of any portion of its Proposal shall not be binding on the State. The State shall independently determine the validity of any Firm's confidentiality designation. Any Firm submitting a Proposal or using the procedures discussed herein expressly accepts the Board's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Firms assume the risk that confidential business information included within a Proposal may enter the public domain.

Firms shall be advised that as a publically bid contract, no Firm shall retain the right to declare its pricing confidential.

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- 2.5 Non-conforming Proposals, defined as those that do not meet the requirements of this RFP, will not be considered. OPen, in its sole discretion, shall determine whether a Proposal conforms to the requirement of this RFP.
- 2.6 OPen expects that Firm can fully meet and fulfill the representations made in its Proposal and do so in a timely manner. Proposals must be realistic and must represent the best estimate of time, materials, and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.
- 2.7 A Firm is fully responsible for the completeness and accuracy of its Proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of the Firm. Should the Firm find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, the Firm shall notify the Board's Designated Contact, in writing, of such findings at least ten (10) days before the Proposal deadline. This will allow issuance of any necessary addenda. It will also help avoid the opening of a defective Proposal and disclosure of a Firm's Proposal upon which award could not be made. All unresolved issues should be addressed in the Proposal.
- 2.8 The Board reserves the right to retain, accept, or reject any or all Proposals or any part of any Proposal, and, in its sole judgment and discretion, determine the merit and qualifications of each product offered, or to solicit new Proposals on the same project or on a modified project which may include portions of the originally proposed project, all or any of which as the Board may deem necessary in the best interest of DPERS and as permitted under law.
- 2.9 By submitting a Proposal, the Firm acknowledges that it has carefully read all sections of this RFP, including all forms, schedules, and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.
- 2.10 This RFP will become part of the awarded and executed contract and its terms will be enforced as such.
- 2.11 The Board reserves the right to cancel this RFP at any time during the procurement process, for any reason or for no reason. The Board makes no commitments expressed or implied, that the publication of this RFP and the solicitation and submission of Proposals thereunder will result in a business transaction with any Firm.
- 2.12 This RFP does not constitute an offer by the Board. A Firm's participation in this process may result in the Firm's selection ("Selected Firm") by the Board to engage in further discussions and negotiations in furtherance of the execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the Board to execute a contract nor to continue negotiations. The Board may terminate negotiations at any time and for any reason, or for no reason.

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The final award of a contract is subject to approval by the Board. In accordance with 29 Del. C. § 83 (b)(17), the Board has the sole right to select the successful Firm(s) for award, to reject any Proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced Proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

After the Evaluation Committee reports its recommendation, and once the contract terms and conditions have been negotiated and finalized, the Board will award the contract. Notice in writing to a Firm of the acceptance of its Proposal by the Board and the subsequent full execution of a written agreement between the Firm and the Board will constitute a legal relationship between the parties, and no Firm will acquire any legal or equitable rights or privileges until the occurrence of both such events.

The Board is not obligated to award a contract to the Firm that submits the lowest bid or to the Firm that receives the highest total point score, rather the contract will be awarded to the Firm whose Proposal is the most advantageous to DPERS, as determined by the Board in its sole discretion.

- 2.13 Once the Board has selected a Firm and concluded successful contract negotiations, all Firms that submitted a Proposal within the established RFP deadline will be notified.

### **3. Term of Engagement**

- 3.1 The contract period is for three one-year engagements, with the option to renew the contract at the Board's request for two additional years, subject to the satisfactory negotiation of terms (including a cost acceptable to both the Board and the Selected Firm) and the annual availability of an appropriation by the General Assembly. The Board is under no express or implied obligation, legal or otherwise, to renew the contract.

### **4. Nature of Services Required**

#### 4.1 Engagement Description and Cycle

- a. The proposer shall conduct an audit of the DPERS' financial statements, the Schedules of Employer Allocations and Pension Amounts (Governmental Accounting Standards Board Statement No. 68), the Delaware Other Postemployment Benefits (OPEB) Fund financial statements, and the Schedules of Employer Allocations and OPEB Amounts (Governmental Accounting Standards Board Statement No. 75) for Fiscal Years Ending June 30, 2020, 2021, and 2022.

#### 4.2 Engagement Standards

- a. To meet the requirements of this RFP, the engagement must be performed in accordance with the applicable standards established by the American Institute of

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Certified Public Accountants (AICPA) and *Government Auditing Standards*, issued by the Comptroller General of the United States.

- b. The Selected Firm must immediately notify the Board consistent with paragraph 12.3(c) herein regarding any known or potential fraud, waste, or abuse identified during the engagement, regardless of materiality. The course of action and additional procedures, if necessary, will be determined by OPen. Failure to notify OPen immediately about any identified known or potential fraud, waste, or abuse is considered contract non-compliance.

#### 4.3 Other Engagement Information

- a. The engagement letter must not have any contract terms or an offer to provide additional services. The engagement letter in no way modifies or adds conditions or terms to the contract and is not considered part of the contract with the Board.
- b. A Statements on Standards for Attestation Engagements (SSAE) 16 report performed on the State's accounting and payroll systems is available for the Selected Firm to use during the engagement.
- c. The Selected Firm agrees it will not prepare the financial statements, note disclosures, or management discussion and analysis (MD&A). The Selected Firm should notify OPen immediately of any request to perform such services.
- d. The Board reserves the right to review the Selected Firm's engagement difference schedule throughout the engagement and any findings the Selected Firm deems inconsequential to the engagement.
- e. Following the completion of the engagement, the Selected Firm must provide a written reporting package in accordance with standards discussed in Section 4.2a. OPen will finalize and distribute copies of the reporting packages, with the exception of the management letter and any confidential information, to the Board's Audit Committee and/or Evaluation Team. The Selected Firm is not to distribute or issue any work products, reporting packages, or findings without prior written consent from the Board. However, communicating exceptions to management in a timely manner is encouraged, along with discussion and in-depth review of the issue.

#### 4.4 Retention and Access to Engagement Documentation

- a. The Selected Firm shall maintain engagement documentation, reporting packages, records, documents, and other evidence pertaining to the workpapers and reports related to this engagement to the extent and in such detail as shall adequately reflect performance hereunder. The Selected Firm agrees to preserve and make available to the Board upon request, such records for a period of five (5) years from the completion of the engagement. Records involving any litigation-related matters shall be retained



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for one (1) year following the termination of such litigation. The Selected Firm agrees to make such records available for inspection, audit, or reproduction to any authorized Board representative in the performance of its duties under the contract. Upon written notice given to the Selected Firm, representatives of the Board or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this contract. The cost of any contract audit disallowances resulting from the examination of the Selected Firm's financial records will be borne by the Selected Firm. Reimbursement to the Board for disallowances shall be drawn from the Selected Firm's own resources and not charged to contract cost or cost pools indirectly charging contract costs.

## **5. Description of the Engagement Entity**

### **5.1 Engagement Entity**

- a. For this RFP, the engagement entity is the Board of Pension Trustees of the Delaware Public Employees' Retirement System (DPERS), which is administered by the Office of Pensions (OPen).

### **5.2 Engagement Contact and Location**

- a. The principal engagement contact will be the Pension Administrator, or a designated representative, who will coordinate the assistance to the Selected Firm. OPen is located at the McArdle Building, Suite 1, 860 Silver Lake Boulevard, Dover, DE 19904-2402.

### **5.3 DPERS Background Information**

- a. DPERS

The following plans/funds (the Plans) are comingled for investment purposes in DPERS trust, and are established in 29 Del. C. §8308 the Delaware Code:

- State Employees' Pension Plan
- Special Fund
- New State Police Pension Plan
- Judiciary Pension Plans (Closed and Revised)
- County & Municipal Police and Firefighters' Pension Plans
- County & Municipal Other Employees' Pension Plan
- Delaware Volunteer Firemen's Fund
- Closed Diamond State Port Corporation Plan
- Closed State Police Pension Plan
- Other Post-Employment Benefits Fund ("OPEB")

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OPEB is established pursuant to 29 Del. C. §5202(b) and 5281. OPEB includes the Delaware Postretirements Health Plan (Plan) and the Delaware Local Government OPEB Investment Trust.

The management of all the Plan and Funds in the System is the responsibility of the Board of Pension Trustees. The Board's oversight includes management of investment funds and pools included in the System, the Post-Retirement Increase Fund, the County & Municipal Police & Firefighters' COLA Fund, and the Delaware Local Government Retirement Investment Pool. These funds are commingled for investment purposes only. The daily operations of the System is the responsibility of OPen.

Although separate financial statements are presented for DPERS as a whole, the System is considered a component unit of the State of Delaware financial reporting entity and its financial statements are included as Pension Trust Funds within the Fiduciary Funds of the State's financial report.

OPen utilizes Peoplesoft v9.2 HRMS as the main processing application. The suite of modules includes HR, Payroll, Base Benefits and Pension Administration. The application runs on an HP-UNIX v11.3.1 platform with Oracle 12c database management (and an upgrade to Oracle 19c is expected in Fall 2019). OPen also utilizes a general ledger system, Microsoft GP2016.

b. Other Useful Background Information

- OPen's website: <http://www.delawarepensions.com>
- Fiscal Year 2020 Budget Act (150<sup>th</sup> General Assembly, House Bill 225) <https://legis.delaware.gov/BillDetail?LegislationId=47647>
- The Board's authority is set forth at 29 Del. C. §8308 and lists all the funds under the administration of the Board.
- DPERS Actuarial Valuation Reports: [https://open.omb.delaware.gov/FinancialReports/actuarial\\_valuation\\_reports.shtml](https://open.omb.delaware.gov/FinancialReports/actuarial_valuation_reports.shtml)

## 6. Time Requirements

### 6.1 Proposal Calendar

- |                                    |  |
|------------------------------------|--|
| a. Request For Proposal issued     | November 1, 2019                               |
| b. Deadline for Proposal questions | November 8, 2019                               |
| c. Written Answers posted          | November 15, 2019                              |
| d. Deadline for Proposals          | December 06, 2019                              |
| e. Contract Award                  | Will occur within 90 days of proposal deadline |

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6.2 Preliminary Engagement Planning

- a. The Audit Committee reserves the right to review the detailed engagement plan and the various related programs and provide comments, if necessary.
- b. A complete draft of the financial statements is expected to be available August 31<sup>st</sup>.

6.3 Entrance Conference

- a. An entrance conference must be held with the Audit Committee each fiscal year. At the entrance conference, the Selected Firm must provide the Audit Committee with a time schedule for the engagement and a listing of all information needed.
- b. The Selected Firm must work with the OPen Liaison to schedule the date and location of the entrance conference.

6.4 Progress Reporting and Exit Conference

- a. The Selected Firm must keep OPen updated on the progress of the engagement. After the engagement has been completed, an exit conference must be held with the Board and the Audit Committee.

6.5 Reporting Packages

- a. Draft Reporting Packages (inclusive of proposed Generally Accepted Government Auditing Standards (GAGAS) opinion, findings, and management letter comments) – The Selected Firm must provide an electronic version of the draft reporting package to the Pension Administrator.

- Fiscal Year 2020                      September 30, 2020
- Fiscal Year 2021                      September 30, 2021
- Fiscal Year 2022                      September 30, 2022

During the Audit Committee’s review, the Selected Firm must be available to discuss the engagement reporting package and resolve any issues. After all issues are resolved, an electronic version of the draft reporting package must be forwarded to the Pension Administrator for the Audit Committee’s final review by the following dates.

- Fiscal Year 2020                      October 30, 2020
- Fiscal Year 2021                      October 30, 2021
- Fiscal Year 2022                      October 28, 2022

- b. Final Reporting Packages – Once the Audit Committee approves the reporting package for issuance, the final reporting package must be emailed as one, comprehensive

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reporting package and in an unsecured PDF format to the OPen Liaison by the following dates.

- Fiscal Year 2020                      November 20, 2020
- Fiscal Year 2021                      November 20, 2021
- Fiscal Year 2022                      November 18, 2022

Reporting package preparation and editing is the responsibility of the Selected Firm.

## **7. Proposals**

- 7.1 No Proposal will move forward for full technical review and scoring unless the mandatory items, as outlined throughout this RFP, are fully addressed as requested.

## **8. Cost Section**

- 8.1 The Cost Section must include (1) a transmittal letter with the name of the Firm and (2) written certification that (a) the Firm agrees to bill OPen only for actual work performed and out-of-pocket expense incurred during its performance of the engagement; (b) billings will be submitted in the format outlined in Section 14. of this RFP; (c) a statement that the Firm will accept reimbursement for travel, lodging, and subsistence at the prevailing rate used by the State of Delaware for its employees; and (d) the person signing the Proposal is duly authorized to represent the Firm, submit the bid, and to execute a contract with the Board.
- 8.2 The Cost Section must contain all detailed cost information relative to performing the engagement as described in this RFP for each fiscal year presented in the schedule as outlined in Appendix A. Appendix A is an example of a detailed cost schedule, and it should be amended, as needed, according to the deliverables of the RFP and specific steps within each deliverable.
- 8.3 If a Firm determines additional items are necessary for the completion of this engagement, including more detail to demonstrate its engagement process, the Firm may include these in its Proposals as separate line items. Any additional *items* will be considered individually and removed from the total cost when comparing the cost sections of Proposals.
- 8.4 The rates quoted in the Proposal shall remain fixed and binding on the Firm at least through the contract term. OPen reserves the right to ask for an extension of time if needed.

## **9. Minimum Requirements Section**

- 9.1 There must be no dollars or total costs included in the Minimum Requirements Section of the Proposal. Inclusion of such information will result in disqualification of the Proposal.

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- 9.2 Each Proposal must be accompanied by a transmittal letter that briefly summarizes the Firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP that the Firm may have taken in presenting the Proposal.

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Firm shall not store or transfer non-public DPERS data outside of the United States.

OPen reserves the right to deny any and all exceptions taken to the RFP requirements.

- 9.3 The Minimum Requirements Section must address all the points outlined in the RFP in the following format:

a. Independence

The Firm must provide the following statement:

“The Firm is independent of the engagement entity as defined by engagement standards in *Government Auditing Standards*, issued by the Comptroller General of the United States.”

The Firm must also list and describe the Firm’s professional relationships involving the engagement entity for the past five years, together with a statement explaining why each relationship does not constitute a conflict of interest relative to performing the proposed engagement, or the Firm must state: “The Firm has had no professional relationships involving the engagement entity within the last five years.”

In addition, the Firm must state that they will give the Board immediate written notice and obtain approval from the Board of any professional relationships with the DPERS, the Board, the Audit Committee, OPen, the State of Delaware and its related entities (e.g., component units, related organizations) before they are entered into during the contract period.

b. License to Practice in Delaware and Delaware Business License

The Firm must provide:

- (1) Copies of valid Delaware CPA licenses or valid CPA licenses from a substantially equivalent jurisdiction as defined by the Uniform Accountancy Act (“UAA”) for all CPAs on the engagement team. A CPA who holds a valid license from any jurisdiction that is not on the substantially equivalent list<sup>1</sup> published by the National Association of State Boards of Accountancy (“NASBA”) may obtain verification from NASBA that such individual's CPA qualifications are substantially equivalent to the UAA. A copy of such verification must be included in the Proposal.

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<sup>1</sup> <http://nasba.org/licensure/substantialequivalency/>

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OPen will also accept screen shots of online license verification from both the State Boards of Accountancy and CPAverify.org, as long as all relevant information is provided in the screen shot, including the name of the state. The Firm must also indicate the web address, with the date, from which this information was obtained.

- (2) A copy of a valid Delaware firm professional license, also known as a permit to practice, issued by the State Board of Accountancy. OPen will accept the Firm professional license in the same manner as described above for individual CPA licenses.
- (3) A copy of a current State of Delaware business license for the Firm, issued by the Delaware Division of Revenue.

c. Firm Qualifications

The Firm must state the size of the Firm, the size of the Firm's governmental staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of the professional staff to be employed in this engagement.

d. Peer Review

The Firm must submit a copy of the most current peer review and a statement whether the quality control review included a government engagement. The Firm must be in compliance with GAGAS peer review requirements.

e. Suspension and Debarment

The Firm must certify that, within the past five (5) years, the Firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not presently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business at Appendix B. In addition, the firm must state that it has not been the subject of any disciplinary action or under referral or inquiry from the American Institute of Certified Public Accountants (AICPA) or any State Board of Accountancy in the past five years.

Any Firm that is currently debarred, suspended, or ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

f. Partner, Supervisor, and Staff Qualifications and Experience

The Firm must identify the engagement team: engagement partners, managers, supervisors, and specialists.

For each person identified, the Firm must indicate whether the person is registered or licensed to practice as a Certified Public Accountant in the State of Delaware; provide information on the person's government auditing experience, including information on relevant continuing professional education for the past three years and membership in professional organizations relevant to the performance of this engagement; and discuss

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whether or not that person, within the past five years, has been the subject of any disciplinary action or inquiry from the American Institute of Certified Public Accountants (AICPA) or any State Board of Accountancy.

The Firm must also identify the extent to which staff to be assigned to the engagement reflect the State of Delaware's commitment to Affirmative Action.

With the express prior permission of the Audit Committee, engagement partners, managers, supervisors, consultants, and Firm specialists may be changed if those personnel leave the Firm, are promoted, are assigned to another office, or for other reasons provided, however, that said replacements have substantially the same or better qualifications or experience as the partners, managers, and supervisors they are replacing. Notwithstanding the foregoing, the Audit Committee retains the right to approve or reject replacements.

- g. Statement on Subcontracting and Third Party Service Providers  
The Firm must include a statement that the work will not be subcontracted and that none of the work products, including engagement documentation, will be subjected to a third party service provider.
- h. Non-Collusion Statement  
A Non-Collusion Statement, attached hereto as Appendix B, must be completed, signed by an authorized representative of the Firm, and included in the Minimum Requirements Section of the Proposal.

## 10. Proprietary Section

10.1 There must be no dollars or total costs included in the Proprietary Section of the Proposal. Inclusion of such information will result in disqualification of the Proposal.

10.2 The Proprietary Section must address all of the following:

- a. Prior Engagements with DPERS, OPen and the State of Delaware  
All engagements performed for DPERS, OPen and the State of Delaware (e.g., component units, related organizations) within the last three years must be listed in the Proposal. These engagements must be ranked on the basis of total staff hours and by type of engagement (e.g., audit, examination, other). The scope of work, date, engagement partners, total hours, the location of the Firm's office from which the engagement was performed, and the name and telephone number of the principal client contact must also be detailed.
- b. Similar Engagements with Other Public Pension Systems  
For the Firm office that will be assigned responsibility for the engagement, the Firm must list the most significant engagements (maximum of five) performed in the last

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three years that are similar to the engagement described in this RFP. These engagements must be ranked on the basis of total staff hours and must indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

c. Specific Engagement Approach

The Firm should demonstrate why the Firm is uniquely qualified to perform the engagement on behalf of DPERS. Information presented in this section should include, but not limited to, innovative engagement approach, approach to identifying and testing effective controls, unique methods for utilizing software and preparing engagement documentation, and example reporting package templates. Any additional procedures that generate additional costs should be separately stated in the Cost Section.

The Proprietary Section must set forth a work plan including, but not limited to, the following, as applicable:

- (1) Proposed segmentation, phases, and/or milestones of the engagement.
- (2) Discussion regarding any early planning and interim testing approaches the Firm uses to try to improve timeliness and efficiency of planning and fieldwork.
- (3) Level of staff and number of hours assigned to each area proposed in (1) without dollars. See “Appendix A – Sample Schedule of Professional Fees and Expenses.”
- (4) Sample methodology to the extent which sampling is to be or planned to be used.
- (5) Processes for evaluating and testing internal controls including plans for adequate coverage of information technology infrastructure and data integrity.
- (6) Extent of software to be used in the engagement.
- (7) Process for project management, including (a) how milestones and delays are monitored and communicated and how adjustments to deliverable dates based on client delays are communicated to OPen and (b) how staff resources are committed to meet OPen deadlines.
- (8) Processes to ensure the quality of the engagement.
- (9) Membership in the AICPA’s Government Audit Quality Center (GAQC) during peer review. If a Firm has joined since the last peer review, it must disclose the membership date.

d. Examples of GAGAS findings

The Firm must include at least two examples of findings issued under a GAGAS engagement. OPen will evaluate the quality of the findings including whether the findings are clear, concise, and easily understood by the public and management. The Firm is encouraged to provide examples not previously included in a DPERS engagement.

e. Other work product examples

The Firm is encouraged to include examples of prior engagement plans, custom audit programs beyond canned or template audit programs, draft reporting packages, unusual



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analytical procedures, unique data or its procedures, and innovative engagement approaches for OPen's review during the evaluation process.

## **11. Evaluation Process**

11.1 The Evaluation Committee shall be comprised of members of the Audit Committee and the Board, the Internal Auditor and the representative from the Division of Accounting. The Evaluation Committee shall determine which Firms meet the minimum requirements pursuant to the selection criteria of the RFP and procedures established in *29 Del. C. §§ 6981 and 6982*. Neither the lowest price nor highest scoring Proposal will necessarily be selected.

The Evaluation Committee reserves full discretion to determine the competence and responsibility, professionally and/or financially, of the Firm. The Firms is to provide, in a timely manner, any and all information that OPen may deem necessary to make a decision.

The Evaluation Committee shall make a recommendation to the Audit Committee, who will review and approve the selection of a Firm. The Audit Committee shall have final authority for the selection of a Firm, subject to the provisions of this RFP and *29 Del. C. § 8308*, and to begin contract negotiations with the Selected Firm.

11.2 As stated above, no Proposal will move forward for full technical review and scoring unless the minimum requirements, as outlined throughout this RFP, are fully addressed. OPen will notify the Firm if the Firm's Proposal did not meet the minimum requirements.

11.3 During the evaluation process, OPen reserves the right to request additional information or clarification from Firms; however, a Proposal may not be modified as a result of such clarification requests. Additionally, OPen, at its discretion may request one or more Firms (but not necessarily every Firm) to make oral presentations as part of the evaluation process. All costs associated with participation in oral presentations are the Firm's sole responsibility.

11.4 The Evaluation Committee may contact any client or customer of the Firm, whether or not included in the Firm's list requested at Section 10.2 of this RFP, and use such information in the evaluation process.

11.5 The Evaluation Committee may negotiate with one or more of the qualified Firms during the same period and may, at its sole discretion, terminate negotiations with any and all Firms at any time.

a. Review of Proposals

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Proposals that do not meet or comply with the instructions of this RFP may be considered non-conforming, deemed non-responsive, and be subject to disqualification at the sole discretion of the Evaluation Committee.

The Evaluation Committee will use a point formula during the review process to score the Proposals. All assignments of points will be at the sole discretion of the Evaluation Committee. Each member of the Evaluation Committee will first score each Proposal by each of the criteria described in Sections 8, 9, and 10. The Evaluation Committee will then convene to review and discuss these evaluations and to combine the individual scores to arrive at an average technical score for each Firm. At any point, a Firm may be eliminated from further consideration for unacceptably low technical scores.

b. Evaluation Criteria

Only Firms meeting the minimum requirements of the RFP will have their Proposals evaluated and scored for both technical qualifications and cost.

All Proposals shall be evaluated using the same criteria and scoring process. Firms are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a Firm’s capabilities so the Firm should be detailed in its Proposal responses. The following criteria shall be used to evaluate Proposals:

Criteria	Weight
<i>Technical</i>	
Prior experience with DPERS, OPen or other Public Pension Systems [references]	10
Quality of work plan, including realistic proposal and time estimates	15
Staffing experience, expertise, and education	15
Sufficient staff assigned	10
Sufficient plan to identify, evaluate, test, and rely on the most important internal controls	10
Adequate risk, materiality, and sampling consideration	10
Engagement approach, including sufficient detail	10
Quality of reporting package examples	8
Member of GAQC	2
<i>Cost</i>	10
<b>Total</b>	<b>100</b>

Cost will not be the primary factor in the selection of any firm.

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c. Reservation of Rights

The Evaluation Committee reserves the right to:

- Select for contract or for negotiations a Proposal other than that with the lowest costs.
- Reject any and all Proposals or portions of the Proposals received in response to this RFP, or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in Proposals received.
- Request modification to Proposal from any or all Firms during the review and negotiation.
- Negotiate any aspect of the Proposal with any Firm and negotiate with more than one Firm at the same time.

The Evaluation Committee reserves the right to reject any Proposal as represented throughout this RFP and from a Firm that:

- Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- Has been convicted under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offenses indicating lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- Has been convicted or has had a civil judgment entered for a violation under State or federal antitrust statutes;
- Has violated contract provisions such as:
  - Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
  - Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
  - Has violated ethical standards set out in law or regulation;
  - Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including debarment by another government entity for cause listed in the regulations.

## **12. Contract Conditions and Considerations**

12.1 After the Selected Firm and the Board have completed successful contract negotiations, the Selected Firm will be required to enter into a written agreement with the Board (the "Contract"). The Board reserves the right to incorporate required fiduciary, federal and state contractual provisions into any Contract negotiated as a result of an accepted Proposal under this RFP, including, but not limited to State of Delaware requirements for data

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security. Any proposed modifications to the terms and conditions of the standard Contract are subject to review and approval by the Board.

12.2 If the Selected Firm to which the Contract is awarded fails to enter into the Contract as herein provided, the award will be annulled and, at the Board's sole discretion, an award may be made to another Firm.

12.3 The Selected Firm must agree to contractual provisions including, but not limited to, the following, as well as those negotiated and agreed to by the parties and not specifically described herein.

a. Term

The term of the Contract between the Selected Firm and OPen shall be for three one-year engagements, with the option to renew the Contract at OPen's request for two additional years. The Contract may be terminated by OPen at any time by giving written notice to the Selected Firm of such termination. Upon such termination, the Selected Firm will be paid for the hours of work actually completed.

In the event the Selected Firm materially breaches any obligation under the Contract, the Selected Firm must not be relieved of any liability to the Board, or DPERS for damages suffered by it by virtue of any such breach. The Board may withhold any payments to Selected Firm for the purpose of set off for such damages.

If the Selected Firm violates any provision of this RFP or the Contract without prior discussion with (and prior written approval of exception by) OPen, including not submitting deliverables timely due to the fault of the Selected Firm or not providing an advance written request for extension for OPen's approval prior to the due dates, the Selected Firm shall be deemed to be in default and subject to liquidated damages in the amount of one-tenth of one percent (0.1%) of the total Contract price for each day following the violation up to ten percent (10%) of the total price. This provision does not preclude damages for breach of Contract for substandard work or damages as enumerated herein.

b. Non-Appropriation

If sufficient funds are not appropriated by the Delaware General Assembly, or other appropriate federal or State organization, to sustain in whole or in part the Selected Firm's performance under the Contract, or if such appropriation is reduced such that the amount of the appropriation is insufficient to sustain said performance, this Contract shall be null and void at the option of OPen. If such termination should occur, OPen shall advise the Selected Firm as soon as possible.

c. Notice

Any notice required under this Contract must be in writing and sent by registered mail to:

State of Delaware  
OPen  
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Attention:  
David Craik  
Pension Fund Administrator  
860 Silver Lake Blvd., Suite 1  
Dover, DE 19904

d. Formal Contract and Purchase Order

The Selected Firm must execute a Contract incorporating the terms of this RFP within twenty business days after commencement of negotiations. When purchase orders are applicable, the Selected Firm must not begin any service prior to receipt of a State of Delaware signed purchase order issued by OPen requesting service, properly processed through the State of Delaware Division of Accounting.

e. Indemnification

1. General Indemnification

The Firm agrees that, in the event it is awarded a Contract, the Firm will defend, indemnify, and save harmless DPERS, its fiduciaries, Board and Committee members, and employees, (“DPERS Indemnitees”) from and against all liability, damages, costs or expenses, causes of actions, suits, judgments, losses, and claims, including reasonable attorney’s fees, brought against DPERS Indemnitees arising out of or resulting from the performance of the auditing services by the Selected Firm under the Contract resulting from this RFP to the extent caused by the Selected Firm’s negligence or arising from any breach or default by the Selected Firm under such Contract.

2. Proprietary Rights Indemnification

The Selected Firm shall warrant that all equipment, software, documentation, services, and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret, or other proprietary rights of any third party. In the event of any claim, suit, or action by any third party against the DPERS, the Board, the Committees, or employees, OPen shall promptly notify the Selected Firm in writing and Selected Firm shall defend such claim, suit, or action at Selected Firm’s expense, and the Selected Firm shall indemnify the State of Delaware against any loss, cost, damage, expense, or liability arising out of such claim, suit, or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods), products or other intellectual property used or furnished by the Selected Firm (collectively “Products”) is, or in the Selected Firm’s reasonable judgment is likely to be, held to constitute an infringing product, the Selected Firm shall at its sole expense and option either:

- a. Procure the right for the DPERS and/or OPen, as appropriate to continue using the Product(s);

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- b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the Contract; or
- c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the OPen agrees to and accepts in writing.

f. Compliance

In performance of the Contract, the Selected Firm is required to comply with all applicable federal, state, and local laws and regulations of the jurisdiction in which the Contract is performed, as well as all applicable professional conduct rules and guidelines. The Selected Firm will also comply with any policies, guidelines, and requirements of the jurisdiction in which the Contract is performed, provided that such policies, guidelines, and requirements are identified to the Selected Firm by the jurisdiction and the Selected Firm states, in writing, that it can comply. The cost of permits and other relevant costs required in the performance of the Contract shall be borne solely by the Selected Firm. For the duration of the engagement, the Selected Firm must be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301(b) and all other applicable statutes and regulations.

The Selected Firm will warrant that it possesses, or will secure at its own expense, all personnel and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal and State laws, and County and local ordinances, regulations, and codes. All of the services required hereunder shall be provided by or performed by the Selected Firm or under its direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services. In accordance with 29 *Del. C.* § 6984, information regarding the award of the Contract will be given to the Delaware Division of Revenue.

The Board reserves the right to audit conformance to the Contract terms and may perform this audit with a third party at its discretion. The Selected Firm shall be under no obligation to permit an audit to the extent that such audit would violate applicable professional standards or undermine the integrity of the audit.

g. Non-Disclosure and Data<sup>2</sup> Security Agreement

No services or other related work under this Contract shall be subcontracted or performed by a third party service provider to complete the engagement. [See Section 9.3.g] Notwithstanding the foregoing, the Selected Firm may use third parties to provide administrative and operational support to the Selected Firm's business operations, none of which includes the services to be performed by the Selected Firm

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<sup>2</sup> For the purposes of the contract (including the Non-Disclosure & Data Security Agreements, if applicable), "data" does not include audit documentation required by the auditing standards.

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under this Contract. All of these third party service providers are subject to confidentiality obligations to protect the confidentiality of client data as defined under Federal and State law. Such entities may be located within or outside the United States; however, all OPen or State data, to the extent stored or housed by such third party vendors, shall be stored or housed, in the “cloud<sup>3</sup>” or otherwise, within the United States as required by the Confidentiality and Non-Disclosure Agreement. This includes backup data and disaster recovery locations. The Selected Firm shall be fully responsible to the State for any such third party service providers, including compliance with the Selected Firm’s obligations set forth in the Confidentiality and Non-Disclosure Agreement if awarded the Contract, the Selected Firm must agree to the terms specified in Appendix C prior to the commencement of the engagement. The Selected Firm and its employees are forbidden from signing any agreements related to this engagement (e.g., non-disclosure agreements, data usage agreements, etc.) that are not presented directly by OPen.

h. Confidentiality of Information

Any reporting packages, information, data, etc. given to, prepared, or assembled by the Selected Firm under this Contract shall not be released or made available to any individual or organization by the Selected Firm without the prior written approval of OPen. All information must be properly secured to prevent unauthorized access in accordance with Internal Revenue Service (IRS) Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies, the Privacy Act of 1974 (as amended by the Computer Matching and Privacy Protection Act of 1988), the Federal Information Security Management Act of 2002, the Social Security Administration’s “Information System Security Guidelines for Federal, State, and Local Agencies Receiving Electronic Information from the Social Security Administration,” and related National Institute of Standards and Technology (NIST) guidelines. Notwithstanding the foregoing, the Selected Firm is authorized to disclose any information related to this Contract when required to by law, legal process, or applicable professional standards.

All Selected Firm staff working on this engagement are required to complete a State of Delaware sponsored cyber security computer based training prior to the commencement of work. OPen will provide access to and instructions for training completion. The Selected Firm must submit proof of completion for each staff member in order to receive access.

Audit workpapers, summaries, and similar records must be retained electronically for at least five (5) years after the completion of the engagement.

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<sup>3</sup> The National Institute of Standards and Technology (NIST) defines cloud computing as a “model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort...”

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At the end of the engagement all non-work paper documentation (documents provided by the State of Delaware to Selected Firm) must be destroyed in all forms (e.g. disk, CD, DVD, paper) except those items required for audit documentation purposes.

i. Use of Work Product

All reporting packages developed under this Contract are the sole and exclusive property of the State, and the State has the exclusive right to their use. The Firm shall seek written permission to use any product created under this Contract.

j. Independent Contractors

The parties to the Contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this Contract to create an agency, partnership, joint venture, or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding, and all other similar matters. Neither party shall be liable for any debts, accounts, obligations, or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums, or any income or other similar taxes.

Location of work for the Firm's contractual support personnel shall be at OPen's sole discretion. OPen may provide working space and sufficient supplies and material to augment the Selected Firm's services.

k. Temporary Personnel are not State Employees

The Selected Firm agrees that any individual or group of temporary staff person(s) provided to the Board, the Audit Committee, OPen or the State of Delaware pursuant to this Contract shall remain the employee(s) of the Selected Firm for all purposes including any required compliance with the Affordable Care Act (ACA) by the Selected Firm. The Selected Firm agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Contract must be provided any benefits, including any healthcare benefits by the State of Delaware and the Selected Firm agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the ACA to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Contract, the Selected Firm agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this RFP, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date



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of hire. Nothing herein shall be deemed to terminate the Selected Firm's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. The Selected Firm will waive any separation fee provided an employee works for both the firm and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

1. Insurance

The Selected Firm recognizes that it is operating as an independent contractor, and not an employee of DPERS, the Board, OPen or the State of Delaware, and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Selected Firm's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Selected Firm in its negligent performance under this Contract.

The Selected Firm shall maintain the following insurance during the term of this Contract:

- Worker's Compensation and Employer's Liability Insurance in accordance with applicable law;
- Commercial General Liability - \$1,000,000.00 per occurrence / \$3,000,000 per aggregate;
- Professional Liability - \$1,000,000.00 per occurrence / \$3,000,000 per aggregate;
- Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence / \$3,000,000 per aggregate; and
- Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 for each person and \$300,000 for each accident as to bodily injury and \$25,000 as to property damage to others.
- Cyber Liability Insurance as required by Appendix F of this RFP.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to OPen in accordance with the policy provisions, and the reporting requirements in this RFP.

Before any work is done pursuant to this Contract, the Certificate of Insurance specified in this section, referencing the Contract number stated herein, shall be filed with OPen. The certificate holder is as follows:

State of Delaware  
Office of Pensions

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860 Silver Lake Blvd, Suite 1  
Dover, DE 19904

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

m. Non-Discrimination and Sexual Harassment

In performing the services subject to this Contract the Selected Firm, as set forth in 19 *Del. C.* §711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The Selected Firm shall comply with all federal and State laws, regulations and policies pertaining to the prevention of discriminatory employment practice.

The Selected Firm shall establish and maintain a written sexual harassment policy that addresses not only the Selected Firm's employees but also employees of the engagement entity. The Selected Firm shall inform its employees of the policy, which must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

n. Covenant Against Contingent Fees

The Selected Firm warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement of understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees and bona-fide established commercial or selling agencies maintained by the Firm for the purpose of securing business. For breach or violation of this warranty, OPen may annul the Contract without liability or at its discretion to deduct from the Contract cost or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

o. Contract Documents

The RFP, the Purchase Order, and the executed Contract, including any supplemental documents, between OPen and the Selected Firm must constitute the Contract between OPen and the Selected Firm. In the event there is any discrepancy between any of these Contract documents, the following order of documents governs so that the former prevails over the latter: Contract, RFP, the Selected Firm's response to the RFP, and the Purchase Order. No other documents shall be considered. These documents contain the entire agreement between OPen and the Selected Firm. The Selected Firm agrees to be bound by the terms of this RFP pending final execution of the Contract by the parties.

p. Applicable Law

The laws of the State of Delaware must apply, except where Federal law has precedence. The firm consents to exclusive jurisdiction in the State of Delaware and

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agrees that any litigation relating to this Contract must be filed and litigated in a court in the State of Delaware.

In submitting a Proposal, the Selected Firm certifies that it complies with all federal, State, and local laws applicable to its activities and obligations including:

1. The laws of the State of Delaware;
2. The applicable portion of the Federal Civil Rights Act of 1964;
3. The Equal Employment Opportunity Act and the regulations issued there under by the federal government;
4. A condition that the Proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. 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.

If the Selected Firm fails to comply with (1) through (5) of this paragraph, OPen reserves the right to disregard the Proposal, terminate the Contract, or consider the Selected Firm in default.

The Selected Firm shall keep itself fully informed of and shall observe and comply with all applicable existing federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

q. Scope of Contract

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

r. Collusion or Fraud

Any evidence of agreement or collusion among firms and prospective firms acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such firms void.

By responding, the Selected Firm shall be deemed to have represented and warranted that its Proposal is not made in connection with any competing firm submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the Selected Firm did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the DPERS, the Board, the Audit Committee, OPen or the State

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of Delaware participated directly or indirectly in the Selected Firm's Proposal preparation or submission.

Advance knowledge of information which gives any Firm any advantage over any other interested Firm(s), in advance of the Opening of Proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular Proposal.

s. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. If the Selected Firm is found to be lobbying, providing gratuities to, or in any way attempting to influence a Board or Committee member of DPERS, OPen or any other State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a Contract resulting from this RFP, the Selected Firm shall have its Proposal immediately rejected and shall be barred from further participation in this RFP.

All contact with DPERS, the Board, the Audit Committee, OPen, and other State of Delaware employees, contractors, or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum, and conditions set forth in this RFP.

t. Solicitation of State Employees

Until the Contract is awarded, the Selected Firm shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employment in order to accept employment with the Selected Firm, its affiliates, actual or prospective contractors, or any person acting in concert with firm, without prior written approval of OPen. Solicitation of State of Delaware employees by the Selected Firm may result in rejection of the firm's Proposal.

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

The Selected Firm shall not permit a former State employee, State officer, or honorary State official to represent or assist the Selected Firm on State matters related to this Contract for a period of two (2) years after termination of employment or appointed status with the State, where that person (a) gave an opinion, (b) conducted an investigation, or (c) were otherwise directly and materially responsible. (29 Del. C. §5805(d))

u. Firm Activity

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No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the Selected Firm. The Selected Firm must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

v. Firm Background Check Requirements

The Selected Firm that accesses State property or comes in contact with vulnerable populations, including children and youth, shall be required to complete background checks on all employees serving the State's on premises Contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

Delaware Sex Offender Central Registry at:  
<https://sexoffender.dsp.delaware.gov/>

Individuals who are listed in the registry shall be prevented from direct contact in the service of an awarded State Contract, but may provide support or off-site premises service for the Selected Firm. Should an individual be identified and the Selected Firm believes its employee's service does not represent a conflict with this requirement, may apply for a waiver to OPen. OPen's decision to allow or deny access to any individual identified on a registry database is final and at the OPen's sole discretion.

All Selected Firm staff working on this engagement are required to have a criminal background check completed through a process approved by OPen at the Selected Firm's expense. At OPen's request, the Selected Firm shall provide a list of all employees serving an awarded Contract. Prior to staff commencing any work on any part of this engagement, each staff member must sign the form at Appendix D of this Contract/RFP and submit it to OPen directly as part of the Contract documentation and complete a successful criminal background check. If OPen determines that, due to criminal convictions reported on the background check, a staff member cannot work on the engagement, the Selected Firm shall remove such staff from the engagement at the request of OPen.

Individual Contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the Contract scope of work or be a matter of common law.

w. Costs and Payment Schedules

All Contract costs must be as detailed specifically in the Cost Section of the Selected Firm's Proposal. No charges other than as specified in the Proposal shall be allowed without written consent of OPen. The Proposal costs shall include full compensation for all taxes that the Selected Firm is required to pay.

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OPen will require a payment notice as detailed in Section 14 of this RFP. Payments for services will not be made in advance of work performed. OPen may require holdback of Contract monies until acceptable performance is demonstrated (as much as 25%).

**13. Additional Services**

- 13.1 If, during the course of the engagement, the Selected Firm suspects or has reason to suspect that there will be significant delays in the timing of the work due to the actions of OPen, such as not providing requested items in a timely manner or not adhering to the agreed-upon time schedule discussed at the entrance conference, the Selected Firm must immediately notify the Board in writing. OPen and the Selected Firm will discuss the issues and develop a solution for completing the engagement.
- 13.2 If it becomes necessary for the Board to request the Selected Firm to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any reporting package issued on this engagement, then such additional work must be performed only if set forth in a Contract addendum between OPen and the Selected Firm. Any such additional work agreed to between OPen and the Selected Firm must fall within the scope of this RFP and be performed at the same rates set forth in the schedule of fees and expenses included in the cost section of the Proposal. Further, if these delays cause the Selected Firm to perform additional work, the Board must approve any additional hours before the hours are incurred.

**14. Notification and Manner of Payment**

- 14.1 The Board agrees to pay the Selected Firm compensation calculated solely on the amount of engagement work performed by the Selected Firm's staff, based on actual hours billed and hourly rates as set forth in the Cost Section of the Selected Firm's Proposal, as well as approved out-of-pocket expenses.
- 14.2 Progress payments may be made no more frequently than 30, 60, 90, and 100 percent of completion based on the hours of work completed during the course of the engagement. Frequency of billing shall not exceed once per calendar month.
- 14.3 The Selected Firm agrees to invoice DPERS through OPen for actual work-performed and out-of-pocket expenses incurred during its performance of the engagement. This is not a fixed-price Contract. The Selected Firm is not to advance bill for work not yet performed. The Board reserves the right to audit the Selected Firm's timekeeping records to ensure billing is appropriate and done after-the-fact.
- 14.4 The invoice for each engagement must include the following: (1) the name of engagement entity/engagement; (2) the sequential invoice number; (3) the purchase order number; (4) the retainage percentage applied to each invoice total, not the total Contract cost; (5) the

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total invoice amount and whether the invoice is a progress or final invoice; (6) a breakdown of each staff member, with both budgeted and actual hours for each person for each portion of the engagement, as represented in the Selected Firm's Proposal, including the corresponding hourly rate; and (7) the amounts, descriptions, and dates of all out-of-pocket expenses for which reimbursement is requested. Ten percent of the invoice amount will be retained until the Exit Conference has been held and the final reports have been reviewed, approved, and issued by OPen (also referenced as OPen finalizing the audit).

- 14.5 The Selected Firm must submit all invoices in electronic format for OPen approval. No paper invoices will be accepted. Any additional work outside the Contract or for additional fees related to the Contract is not permitted without the Pension Administrator's knowledge and approval.
- 14.6 Any additional work outside of the Contract or for additional fees related to the Contract must be approved by the Board.

## **15. Dispute Resolution**

- 15.1 The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Contract promptly by negotiation between executives who have authority to settle the controversy. All offers, promises, conduct, and statements, whether oral or written, made in the course of the negotiation by any of the parties, its agents, employees, experts, and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable may not be rendered inadmissible. If the matter is not resolved by negotiation, then the matter will proceed to mediation as set forth below.

## **16. Press Releases or Public Disclosures**

- 16.1 The Board reserves the right to pre-approve, in writing, any news or broadcast advertising releases concerning this RFP, the resulting Contract, the work performed, or any reference to OPen with regard to any project or Contract performance.
- 16.2 The Board will not prohibit or otherwise prevent the Selected Firm from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Selected Firm shall not use the State's seal or imply preference for the solution or goods provided.





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**Appendix B – Non-Collusion & Debarment Statement**

This is to certify that the undersigned Firm has neither directly nor indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this Proposal. The undersigned Firm further certifies that it is not a subcontractor to another Firm who also submitted a Proposal as a primary Firm in response to this RFP.

The undersigned authorized representative must be an individual who has legal authority on behalf of the Firm to enter into a formal agreement with the Board of Pension Trustees of DPERS.

Company Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email address: \_\_\_\_\_

Certification type(s)	Check all that apply
Minority Business Enterprise (MBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Woman Business Enterprise (WBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Disadvantaged Business Enterprise (DBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Veteran Owned Business Enterprise (VOBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Service Disabled Veteran Owned Business Enterprise (SDVOBE)	<input type="checkbox"/> Yes <input type="checkbox"/> No

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

**AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner, or proprietor been the subject of a Federal, State, or Local government suspension or debarment?

YES  NO

If yes, please explain: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Notary Public: \_\_\_\_\_ Commission Expires: \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_

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**Appendix C – Confidentiality and Non-Disclosure Agreement for Contracted CPA Firms**

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is entered into as of           [DATE]           (“the Effective Date”) by and between the Board of Pension Trustees of the Delaware Public Employees Retirement System (the “Board”), which is administered by the Office of Pensions, (“OPen”), 401 Federal Street, Townsend Building, Suite 1, Dover, Delaware 19901 and           [FIRM NAME]           (the “Firm”), a Delaware           [ENTITY TYPE (e.g. limited liability partnership)]           with its place of business located at           [FIRM ADDRESS]           (collectively the “Parties”).

**WHEREAS**, The Board and the Firm have entered into a Professional Services Agreement (the “Engagement Agreement”) dated           [DATE]           and captioned as OPen contract number [XX-CPA-XX], under which Firm will provide           [SERVICE]           for the Board (the “Engagement”);

**WHEREAS**, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Engagement Agreement;

**WHEREAS**, during the course of and in conjunction with the Firm’s performance of its duties under the Engagement in accordance with the Engagement Agreement, the Firm will have access to and possession of certain DPERS and State of Delaware (“State”) data, information and documents that are confidential under Federal and State law, the unauthorized disclosure of which could expose DPERS, the Board and the State to significant legal liability.

**WHEREAS**, the Board desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the Firm desires to provide such assurance and protections to the Board on the terms set forth herein; and

**WHEREAS**, the Board and the Firm represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

**NOW THEREFORE**, in consideration of the promises and mutual agreements herein, the Board and the Firm agree as follows:

1. As used herein, the following terms shall have the following meanings:
  - a. “Confidential Information” includes, with limitation, tax returns and related information, employment and employee performance records and any related documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of The Board, and/or OPen or otherwise obtained by or provided to the Firm in conjunction with the Engagement.
  - b. “Proprietary Information” includes, without limitation, request for quotes, cost or pricing data,

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government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of a system, application, network and access information, in the possession of the State or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

- c. Personally identifiable information (“PII”), in the possession of DPERS, the Board, OPen or otherwise obtained by or provided to the Firm in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B-101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver’s license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term “Personal Information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.
  - d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as “Protected Information.”
2. DPERS shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by DPERS in conjunction with the Engagement, regardless of format. The firm acknowledges and agrees that the Firm shall have no right, title, or interest in such data and information. Further, the Firm shall not access State user accounts or State data, except as required or permitted by the express terms of the Engagement Agreement or any otherwise permitted in writing by the Board.
  3. The Board agrees to specifically identify Protected Information in writing as confidential prior to providing to the Firm and strictly limit provision of Protected Information to that which is essential to the Firm’s performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, the Board shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to the Firm. The Firm shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, the Firm shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:
    - a. PII obtained by the Firm is and shall remain property of DPERS.
    - b. At no time shall any Protected Information or any other data or processes which either belongs to or are intended for the use by DPERS, the Board, OPen, or the State or its officers, agents, or employees, be copied, disclosed, or retained by the Firm or any employee of the Firm for

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subsequent use in any transaction that does not involve the Engagement.

- c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Engagement Agreement.
  - d. Protected Information shall be safeguarded by the Firm from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the Firm for safeguarding the Firm's own confidential information.
  - e. The Firm's desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.
  - f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Engagement Agreement.
  - g. All DPERS and State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
4. No DPERS or State data, including Protected Information, shall be stored or transferred outside of the United States by the Firm except to the extent permitted in the Engagement Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.
  5. The Firm shall not disclose any Protected Information to any person or entity except to the extent the Firm is permitted to disclose such information as provided in this Confidentiality Agreement or the Engagement Agreement.
  6. To the extent applicable, the Firm understands and acknowledges its responsibilities under 6 *Del. C. Ch. 12B* ("Computer Security Breach") and Appendix F of the RFP for this engagement. The Firm further understands and acknowledges the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. The Firm further acknowledges that 6 *Del. C. § 12B-104* sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
  7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, the Firm shall disclose to the Firm engagement partner and to OPen, in writing, the occurrence of such breach or intrusion and, to the extent the Firm is aware, the assets that might have been breached or disclosed.
  8. The Firm is bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. The Firm further understands that the State may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality Agreement shall affect the applicability or

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enforcement of the Delaware Return Secrecy Statute (30 *Del. C.* § 368) or corresponding provisions of Federal law (26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.* § 305); Health Insurance Portability and Accountability Act and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to Protected Information.

9. The Firm understands that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. The Firm understands that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the Firm staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.
10. Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a), the State and/or DPERS are not permitted to agree to indemnify the Firm, directly or indirectly.
11. The Firm understands that it shall promptly contact OPen, in writing, unless prohibited by law from providing such notice, 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, State data. Further, except to the extent required by law, the Firm shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying OPen, in writing, unless prohibited by law from providing such notice.
12. The Firm understands that it and its employees may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.
13. The Firm agrees to safeguard any password or security codes provided to it and its employees during the course of the Engagement.
14. The Firm agree to follow its security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.
15. The Firm understands that it and its employees may be liable for any losses experienced by The Board, OPen or the State or any remediation costs to the extent required by law associated with a breach and that the Board and/or the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized

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disclosures.

16. The Firm understands that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Engagement Agreement and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records in accord with professional standards, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to OPen upon request.
17. The Firm understands that it is expected to comply with Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.
18. The obligations imposed herein do not extend to information or data which:
  - a. is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the Firm;
  - b. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
  - c. is determined to have been developed by the Firm independently of disclosures made hereunder; or
  - d. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.
19. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Engagement Agreement, the terms of this Confidentiality Agreement shall control.
20. The Firm’s signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by OPen, and or the Board.

**[FIRM NAME] (the “Firm”):**

Printed Name:

Position:

Signature & Date:

<p><u>[NOT TO BE COMPLETED UNTIL THE CONTRACT HAS BEEN AWARDED]</u></p>
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**Appendix D – Confidentiality and Non-Disclosure Agreement for Individual Audit Staff**

This Confidentiality and Non-Disclosure Agreement (“Confidentiality Agreement”) is entered into as of           [DATE]           (“the Effective Date”) by and between the Board of Pension Trustees of the Delaware Public Employees Retirement System (the “Board”), which is administered by the Office of Pensions, (“OPen”), 401 Federal Street, Townsend Building, Suite 1, Dover, Delaware 19901 and           [EMPLOYEE NAME]          , employee of           [FIRM NAME]           (the “Firm”), a Delaware           [ENTITY TYPE (e.g. limited liability partnership)]           with its place of business located at           [FIRM ADDRESS]           (collectively the “Parties”).

**WHEREAS**, The Board and the Firm have entered into a Professional Services Agreement (the “Engagement Agreement”) dated           [DATE]           and captioned as OPen contract number XX-CPA-XX, under which Firm will provide           [SERVICE]           for The Board (the “Engagement”);

**WHEREAS**, the parties intend that this Confidentiality Agreement, by made a part of, subject to the terms of, and incorporated by reference into the Engagement Agreement;

**WHEREAS**, during the course of and in conjunction with the Firm’s performance of its duties under the Engagement in accordance with the Engagement Agreement, the Firm will have access to and possession of certain State of Delaware (“State”) data, information and documents which are confidential under Federal and State law, and which the unauthorized disclosure of which could expose the Board and the State to significant legal liability.

**WHEREAS**, The Board desires to obtain assurance and protections for the confidentiality, safeguarding and non-disclosure of such information and the Firm desires to provide such assurance and protections to the Board on the terms set forth herein; and

**WHEREAS**, the Board and the Firm represent and warrant that each party has full right, power and authority to enter into and perform under this Confidentiality Agreement;

**NOW THEREFORE**, in consideration of the promises and mutual agreements herein, the Board and Firm agree as follow:

1. As used herein, the following terms shall have the following meanings:
  - a. “Confidential Information” includes, with limitation, tax returns and related information, employment and employee performance records and any related documentations or writings, driver performance records, financial data, claimant or employer names and addresses, and social security and tax identification numbers, in the possession of DPERS, and/or OPen or otherwise obtained by or provided to the Firm in conjunction with the Engagement.

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- b. “Proprietary Information” includes, without limitation, request for quotes, cost or pricing data, government spending plan data, contractor technical proposal data, independent government cost estimates, negotiation strategies and contractor data presented in negotiations, contracting plans, statements of work, together with information about the design and configuration of a system, application, network and access information, in the possession of DPERS or the State or otherwise obtained by or provided to the Firm in conjunction with the Engagement.
  - c. Personally identifiable information (“PII”), in the possession of OPen or otherwise obtained by or provided to the Firm in conjunction with the Engagement, is defined in 6 *Del. C.* § 12B-101(4), and also includes (1) information or data, alone or in combination, that identifies or authenticates a particular individual, which includes, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver’s license number, social security number, credit or debit account numbers, medical records number), Criminal history, Citizenship status, Medical information, Financial information, Usernames, Answers to security questions or other personal identifiers; and (2) information or data that meets the definition ascribed to the term “Personal Information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.
  - d. Confidential information, Proprietary Information, and PII as used in this Confidentiality Agreement may be collectively referred to herein as “Protected Information.”
2. DPERS shall at all times own all right, title and interest in data, information, and documents, including Protected Information, provided to, used by, or reviewed by me by the DPERS and/or OPen in conjunction with the Engagement, regardless of format. I acknowledge and agree that I shall have no right, title, or interest in such data and information. Further, I shall not access State user accounts or State data, except as required or permitted by the express terms of the Engagement Agreement or any otherwise permitted in writing by OPen.
  3. OPen agrees to specifically identify Protected Information in writing as confidential prior to providing to me and strictly limit provision of Protected Information to that which is essential to the Firm’s performance of Services under the Contract. Notwithstanding the foregoing, and to the extent it deems necessary, OPen shall de-identify, remove, mask, or obfuscate any information which constitutes Protected Information before providing documents or other records to me. I shall protect Protected Information and any other information related to the Engagement at all times to ensure that there is no inappropriate or unauthorized use or disclosure of State information under any circumstances. To that end, I shall safeguard the confidentiality, integrity, and availability of Protected Information and shall comply with the following conditions:
    - a. PII obtained by me is and shall remain property of DPERS.
    - b. At no time shall any Protected Information or any other data or processes which either belongs to or are intended for the use of DPERS, the State or its officers, agents, or employees, be copied, disclosed, or retained by me for subsequent use in any transaction that does not involve



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the Engagement.

- c. No use shall be made of any information collected in connection with the Engagement except as necessary to fulfill the Services required under the Engagement Agreement.
  - d. Protected Information shall be safeguarded by me from loss, theft, or inadvertent disclosure at all times, with me utilizing the same or better standards and controls as used by the Firm for safeguarding the Firm's own confidential information.
  - e. The Firm's desktop computers, laptops, tablets, cell phones and all other portable electronic devices/media containing Protected Information shall be encrypted and/or password protected.
  - f. The disclosure of information and details relating to a loss of Protected Information shall be limited to those who need to know for purposes contemplated under the Engagement Agreement.
  - g. All DPERS or State, non-bulk data in transit via Secure FTP shall be encrypted, including data that resides on mobile devices.
4. No DPERS or State data, including Protected Information, shall be stored or transferred outside of the United States by me except to the extent permitted in the Engagement Agreement and this Confidentiality Agreement. This includes backup data and data stored at disaster recovery locations.
  5. I shall not disclose any Protected Information to any person or entity except to the extent the Firm is permitted to disclose such information as provided in this Confidentiality Agreement or the Engagement Agreement.
  6. To the extent applicable, I understand and acknowledge my responsibilities under 6 *Del. C. Ch. 12B* ("Computer Security Breach") and the importance of compliance with the notification provisions of that chapter in the event that a data breach occurs. I further acknowledge that 6 *Del. C. § 12B-104* sets forth the enforcement procedures available to the Attorney General in the event of a violation of chapter 12B.
  7. Within 24 hours of the discovery of any security breach or actual suspicious intrusion involving State data, I shall disclose to the Firm engagement partner and to OPen, in writing, the occurrence of such breach or intrusion and, to the extent I am aware, the assets that might have been breached or disclosed.
  8. I am bound by and must comply with all applicable State and Federal laws relating to confidentiality, privacy and non-disclosure. I further understand that the State may seek any remedy available to it to enforce this Confidentiality Agreement, including, but not limited to, application for a Court order prohibiting disclosure of information in breach of this Agreement. Nothing in this Confidentiality Agreement shall affect the applicability or enforcement of the Delaware Return Secrecy Statute (30 *Del. C. § 368*) or corresponding provisions of Federal law

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(26 U.S.C. §6103(i)(1)); Delaware Bank Franchise Tax Return secrecy statute (5 *Del. C.* §1113); Delaware Department of Labor confidentiality statute (19 *Del. C.* § 3125); Delaware Department of Technology and Information Internal Policy on Confidentiality (Non-disclosure) and Integrity of Data dated 1/3/06 (Doc. Ref. No. DTI-0065); Delaware Department of Transportation confidentiality statute regarding the release of motor vehicle driving history and license records (21 *Del.C.* § 305); Health Insurance Portability and Accountability Act and the accompanying implementing Administrative Simplification regulations (45 C.F.R. parts 142, 160, 162, and 164) to the extent those laws, regulations, and policies apply to Protected Information.

9. I understand that Federal tax information received from the IRS and the SSA may be accessed by agency personnel only. This includes file transfers. I understand that unauthorized inspection and use of Federal tax information, such as fax transmittals that are not addressed to the Firm staff or the extraction of Federal tax information that is outside the scope of the engagement can result in civil and criminal penalties under the Internal Revenue Service Code §§ 7213, 7213(A) and 7431 for unauthorized inspection. These penalties include fines, not to exceed \$5,000 and/or five (5) years imprisonment, plus any cost of prosecution.
10. Without limitation of additional legal bases, pursuant to the State of Delaware Constitution of 1897 at Art. VIII, §§ 3 and 6, and 29 *Del.C.* § 6519(a) DPERS and the State of Delaware are not permitted to agree to indemnify me or the Firm, directly or indirectly.
11. I understand that I shall promptly contact the Firm engagement partner and OPen, in writing, unless prohibited by law from providing such notice, 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, State data. Further, except to the extent required by law, I shall not respond to subpoenas, service of process, and other legal requests related to DPERS and/or the State without first notifying the Firm engagement partner and OPen, in writing, unless prohibited by law from providing such notice.
12. I understand that I may be subject to clearance through the State's Security Clearance Program prior to the review of any State data.
13. I agree to safeguard any password or security codes provided to me during the course of the Engagement.
14. I agree to follow the Firm's security procedures and ensure that all data and information relative to the Engagement is properly stored, encrypted on portable devices, and password protected at all times.
15. I understand the Firm and I may be liable for any losses experienced by DPERS and/or the State or any remediation costs to the extent required by law associated with a breach and that DPERS and the State will pursue whatever legal means necessary to recover all such losses and costs, as well as any appropriate equitable relief to prevent unauthorized disclosures.

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16. I understand that data, including Protected Information, shall be permanently deleted in accordance with the terms of the Engagement Agreement and shall not be recoverable, according to the National Institute of Standards and Technology (NIST) approved methods except for copies retained in work paper files or records in accord with professional standards, anything that may be stored in back up media or other electronic data storage systems, latent data and metadata. Certificates of destruction must be provided to OPen upon request.
17. I understand that I am expected to comply with Generally Accepted Government Auditing Standards as to reporting confidential and sensitive information.
18. The obligations imposed herein do not extend to information or data which:
  - a. is in the public domain at the time of receipt or which comes into the public domain thereafter through no fault of the Firm;
  - b. is disclosed with the prior written approval of the designated Contracting Officer of the applicable State entity;
  - c. is determined to have been developed by the Firm independently of disclosures made hereunder; or
  - d. is disclosed pursuant to Court order after prior notification to the designated Contracting Officer of the applicable State entity.
19. In the event there is a discrepancy or a conflict between the terms of this Confidentiality Agreement and the Engagement Agreement, the terms of this Confidentiality Agreement shall control.
20. My signature below represents my agreement with the items above for the duration of the Engagement and until engagement work papers are properly destroyed under the terms of Paragraph 16 herein or as otherwise directed by OPen.

**Individual Audit Staff:**

Printed Name:

Position:

Signature & Date:

<u>[NOT TO BE COMPLETED UNTIL THE CONTRACT HAS BEEN AWARDED]</u>
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**Appendix E – Non-Public Data Owned by the State of Delaware**

**State of Delaware Cloud and/or Offsite Hosting Specific Terms and Conditions**

between the State of Delaware Office of Pensions and [CONTRACTOR NAME] dated [DATE]

This document shall become part of the final contract.

	<p><b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.          Exceptions will be considered non-compliant and non-responsive.</b></p>
<b>1</b>	<p><b>Data Ownership:</b></p> <p>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 shall not access State of Delaware User accounts, or State of Delaware Data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request.</p>
<b>2</b>	<p><b>Data Protection:</b></p> <p>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:</p> <p>a) All information obtained by the Service Provider under this contract shall become and remain property of the State of Delaware.</p> <p>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.</p>
<b>3</b>	<p><b>Data Location:</b></p> <p>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.</p>
<b>4</b>	<p><b>Encryption:</b></p> <p>a) The Service Provider shall encrypt all non-public <b>data in transit</b> regardless of the transit mechanism.</p> <p>b) For engagements where the Service Provider stores sensitive personally identifiable or otherwise confidential information, this data shall be <b>encrypted at rest</b>. 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 <a href="#">FIPS140-2</a>, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the <a href="#">Cloud and Offsite</a></p>

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	<p><b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.          Exceptions will be considered non-compliant and non-responsive.</b></p>
	<p><a href="#">Hosting Policy</a>. Additionally, where encryption of data at rest is not possible, Firm must describe existing security measures that provide a similar level of protection.</p>
<b>5</b>	<p><b>Breach Notification and Recovery:</b>          Delaware Code requires public breach notification when citizens’ personally identifiable information is lost or stolen. Reference: <a href="#">6 Del. C. § 12B-102</a>. 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 the term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves a Contractor from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Contractor harmless.</p>
<b>6</b>	<p><b>Notification of Legal Requests:</b>          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.</p>
<b>7</b>	<p><b>Termination and Suspension of Service:</b>          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.</p> <p>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.</p> <p>b) Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the Service Provider shall not take any action to intentionally erase any State of Delaware data for a period of 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 90 day timeframe, Firm will continue to secure and back up State of Delaware data covered under the contract.</p> <p>c) Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p> <p>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 (NIST) approved methods and certificates of destruction shall be provided to the State of Delaware.</p>

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	<b>Terms and Conditions Clauses 1-13 are mandatory for every engagement.        Exceptions will be considered non-compliant and non-responsive.</b>
<b>8</b>	<p><b>Background Checks:</b></p> <p>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 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.</p>
<b>9</b>	<p><b>Data Dictionary:</b></p> <p>Prior to go-live, the Service Provider shall provide a data dictionary in accordance with the State of Delaware <a href="#">Data Modeling Standard</a>.</p>
<b>10</b>	<p><b>Security Logs and Reports:</b></p> <p>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.</p>
<b>11</b>	<p><b>Contract Audit:</b></p> <p>The Service Provider shall allow the State of Delaware to audit conformance including contract terms, system security and data centers as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days advance written notice and shall not unreasonably interfere with the Service Provider's business.</p>
<b>12</b>	<p><b>Sub-contractor Disclosure:</b></p> <p>The Service Provider shall identify all of its strategic business partners related to services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Service Provider, who will be involved in any application development and/or operations.</p>
<b>13</b>	<p><b>Operational Metrics:</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>a) Advance notice and change control for major upgrades and system changes</li> <li>b) System availability/uptime guarantee/agreed-upon maintenance downtime</li> <li>c) Recovery Time Objective/Recovery Point Objective</li> <li>d) Security Vulnerability Scanning</li> </ul>

**By signing this Agreement, the Service Provider abides by all of the above Terms and Conditions.**  
**Service Provider Name/Address (print):** \_\_\_\_\_

**[NOT TO BE COMPLETED UNTIL THE  
 CONTRACT HAS BEEN AWARDED]**

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**Service Provider Authorizing Official Name (print):** \_\_\_\_\_

**Service Provider Authorizing Official Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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**Appendix F – Cyber Responsibilities, Liability, and Insurance**

**A. Firm Protection of Customer Data**

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

**B. Definitions**

**Data Breach**

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

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

1.2 Access to PII that is for an unauthorized purpose, or in excess of authorization,

2. Exclusion

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

**Personally Identifiable Information (PII)**

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

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

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

**Customer Data**



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

**Security Incident**

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

**C. Responsibilities of Firm in the Event of a Data Breach**

1. The Firm shall notify State of Delaware, Department of Technology and Information (DTI), and the Office of Pensions (OPen) without unreasonable delay when the Firm confirms a data breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.
  - 1.1 Should the State of Delaware or the Firm determine that a data breach has actually occurred; the Firm will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by the Firm, DTI, and OPen.
  - 1.2 Should any corrective action resultant from Section B.1.1. above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall reside with DTI.
  - 1.3 In the event of an emergency the Firm may take reasonable corrective action to address the emergency. In such instances the corrective action will not be considered final until approved by DTI.
  - 1.4 For any record confirmed to have been breached whether such breach was discovered by the Firm, the State, or any other entity and notwithstanding the definition of personally identifiable information as set forth at 6 Del. C. § 12B-101 the Firm shall:
    - 1.4.1 Notify in a form acceptable to the State, any affected individual as may be required by 6 Del. C. § 12B-101 of the Delaware Code.
    - 1.4.2 Provide a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach.
    - 1.4.3 Meet and confer with representatives of DTI and OPen regarding required remedial action in relation to any such data breach without unreasonable delay.
    - 1.4.4 Bear all costs associated with the investigation, response and recovery from the breach, such as 3-year credit monitoring services, mailing costs, website, and toll free telephone call center services.

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**D. No Limitation of Liability for Certain Data Breaches**

1. Covered Data Loss

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

2. Covered Disclosure

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

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

**E. Cyber Liability Insurance**

1. An awarded Firm unable to meet the DTI Cloud and Offsite Hosting Policy requirement of encrypting PII at rest shall, *prior to execution of a contract*, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded Firm shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s).
2. Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. The level applicable to this contract is: Level 2. Should the actual number of PII records exceed the anticipated number, it is the Firm's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that the Firm fails to obtain sufficient coverage, Firm shall be liable to cover damages up to the required coverage amount.

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

**F. Compliance**

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1. The Firm is required to comply with applicable security-related Federal, State, and Local laws.

**G. Media Notice**

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

**H. Points of Contact – Data Breach**

1. State of Delaware

Department of Technology and Information  
Solomon Adote, Chief Security Officer  
[Solomon.Adote@delaware.gov](mailto:Solomon.Adote@delaware.gov); 302-739-9631

Office of Pensions  
David Craik, Pension Administrator  
[David.Craik@delaware.gov](mailto:David.Craik@delaware.gov); 302-739-4208