



State of Delaware
Department of Human Resources
Statewide Benefits Office

STATE EMPLOYEE BENEFITS COMMITTEE

**Request for Proposal for Professional Services
for the State of Delaware's
Flexible Spending Account Program,
Pre-Tax Commuter Program
and COBRA Administration
DHR24005-FSA_COBRA**

RFP Release Date
Monday, July 8, 2024

Intent to Bid Deadline –
Monday, July 22, 2024, 1:00 p.m. ET (Local Time)

Mandatory Pre-Proposal Meeting (Virtual) –
Wednesday, July 24, 2024, 11:00 a.m. ET (Local Time)

Proposals Due –
Thursday, August 15, 2024 by 1:00 p.m. ET (Local Time)

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I. Overview

The State of Delaware, Department of Human Resources (“DHR”), on behalf of the State Employee Benefits Committee (“SEBC”), seeks professional services to enter for the purpose of administering its Flexible Spending Account Program (hereafter “FSA”), Pre-Tax Commuter (hereafter “PTC”) Program and Consolidated Omnibus Budget Reconciliation Act of 1985 (hereafter “COBRA”) administration. This request for proposals (“RFP”) is issued pursuant to 29 Del. C. §§ [6981 and 6982](#).

For complete information about the State of Delaware’s benefit programs and COBRA administration, please go to <https://de.gov/statewidebenefits>.

The proposed schedule of events subject to the RFP is outlined below. However, these dates and milestones are not absolute and may change due to unplanned events during the bid proposal and award process:

Event	Target (Local ET Time)
RFP Released	Monday, July 8, 2024
Intent to Submit Proposal Deadline	Monday, July 22, 2024, 1:00 p.m.
Mandatory Pre-Proposal Meeting (Conference Call)	Wednesday, July 24, 2024, 11:00 a.m.
Questions due to SBO from Confirmed Bidders	Friday, July 26, 2024, 9:00 a.m.
Responses to Questions to Confirmed Vendors	By Friday, August 2, 2024

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Event	Target (Local ET Time)
Deadline for Receipt of Proposals	Thursday August 15, 2024, 1:00 p.m.
Notification of Finalists - Invitation to Interview	September 10, 2024
Finalist Interviews	October 2, 2024
Recommendation of Finalist(s) to SEBC	November 25, 2024

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing 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 which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the vendor shall not store or transfer non-public State of Delaware data outside of the United States. For technology related solicitations, vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PRE-PROPOSAL MEETING

A mandatory pre-proposal meeting has been scheduled to for Wednesday July 24, 2024, at 11:00 a.m. ET (local time) via Microsoft Teams.

Proposals will not be accepted if the interested vendor does not participate in the mandatory pre-proposal meeting. Topics will include general information and administrative requirements for proposal preparation. The primary contact for the RFP should attend along with anyone who is primarily responsible for entering responses in ProposalTech as described in Section IV.B. Only one person acting as the representative from the interested vendor is required to attend, but anyone on the team is welcome to participate. A roll call will be taken to confirm attendance.

Meeting minutes may be taken. If new or additional information is provided, an addendum may be released to address information provided during the mandatory pre-proposal meeting. Questions regarding other topics will not be entertained and must be submitted as part of the Questions and Answers process as described in Section IV.B.

II. Scope of Services

A. Background and History

1. Overview of the SEBC

The SEBC was established by the State Employee Benefits Consolidation Act, 29 *Del. C.* §§ 96. The SEBC has control and management of all employee benefits. The SEBC selects all carriers or third-party administrators necessary to provide coverage to State employees and non-Medicare and Medicare retirees, enters into contracts for the purpose of general administration of employee benefits, determines if/whether contracts are to be fully insured or self-insured, and adopts rules and regulations for the general administration of the employee benefit coverage.

Membership of the SEBC is determined by 29 *Del. C.* § 9602. The Statewide Benefits Office (“SBO”) is a division within DHR. SBO functions as the administrative arm of the SEBC responsible for the administration of all statewide benefit programs with the exception of pension and deferred compensation benefits. These programs include, but are not limited to, health (with wellness and disease management programs), prescription drug, dental, vision, disability, life, flexible spending account program, pre-tax commuter program, employee assistance program, third-party network of surgeons of excellence and supplemental critical illness and accident benefits. Visit <https://dhr.delaware.gov/benefits/> for information about the programs. Some programs are not offered to all benefits-eligible plan participants; specific details on benefits eligibility for the programs included in this RFP are described in the next section further below.

Benefit eligible plan participants include the State’s active employees (State agency, school district, charter school, Delaware State University, and Delaware Technical Community College employees) and their dependents; non-Medicare and Medicare retired employees and their dependents; employees of non-State groups (i.e., towns, fire companies, the University of Delaware; this group is also referred to as “participating group” or “non-payroll group” employees) and their dependents; and COBRA participants. By statute, employee unions cannot negotiate for benefits. Plan participants are primarily located within the State of Delaware, although a small number of participants reside in other states and countries.

2. Program Information

The State currently contracts with Application Software, Inc. (“ASI”) to administer its FSA and PTC programs, as well as its COBRA administration services. The contract expires on June 30, 2025.

The State is interested in evaluating opportunities to address certain administrative challenges that exist within the current FSA program. These challenges are outlined within the program-specific background section below. Interested vendors are encouraged to be creative and thoughtful about potential solutions to these administrative challenges.

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While the State currently does not offer an IRS-qualified high deductible health plan (“HDHP”), it is contemplating offering this type of medical plan option in the future.

Flexible Spending Account Program (FSA) & Pre-Tax Commuter Program (PTC) Administration

Currently, the State offers health care and dependent care FSA and PTC benefits to approximately 40,000 full-time and part-time eligible employees under a voluntary IRC Section 125 plan. Participants who are not eligible for FSA or PTC benefits include non-Medicare and Medicare retired employees and their dependents. Employees of non-State groups and their dependents are also not eligible for the FSA or PTC programs (see Section II.A.1 for further description of this group).

Interested vendors may view all information specific to FSA and PTC benefits governed by the SEBC at the following websites:

- FSA: <https://dhr.delaware.gov/benefits/fsa/index.shtml>
- PTC: <https://dhr.delaware.gov/benefits/commuter/index.shtml>

All costs for the administration of this program shall be funded from FSA forfeiture amounts, which the State will use to subsidize administration fees.

The current Open Enrollment process is web-based. The FSA vendor captures the enrollment information and sends an electronic file to the State to upload into the State’s payroll system. The State creates an electronic file with all necessary information for the vendor containing employees’ Open Enrollment elections, which are made available to the FSA vendor at a date to be determined following the Open Enrollment process. As a requirement, the vendor must use the current file specifications and only receives the employee identification number and the last four (4) digits of Social Security Numbers as identifiable information. (See Attachment 20 for the mandatory file layouts.)

Currently, SBO receives all new enrollments and election changes and the forms are entered into the payroll system by SBO. Terminations are processed automatically based on system rules. The State’s payroll file is updated regularly (i.e., bi-weekly) on a pay cycle basis (26 pay periods) and available via the State’s SFTP server noting payroll deductions and any new enrollments, changes, and terminations.

In light of the potential offering of a HDHP, the State is interested in exploring a limited purpose health care FSA.

Administrative challenges and opportunities for enhancement that exist within the current FSA program include:

- **New hire enrollment process** – When a new hire enrolls in the FSA outside of the annual Open Enrollment process, it is a manual process that requires the new hire to complete a paper enrollment form that the SBO enters manually into the State’s benefits administration system (Oracle-based PeopleSoft system). The enrollment

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form is then uploaded to the FSA vendor portal for the vendor to create an account for the employee. In contrast, during Open Enrollment, employees make their FSA elections online via the FSA vendor's electronic enrollment system. Ideally, the new hire enrollment process would also be automated.

- **Single sign-on from the State's benefits administration system** – Some of the State's current vendor partners can accept participants' enrollment elections via a single sign-on electronic link between the State's benefits administration system and the vendor partners' enrollment systems. The State's FSA vendor utilizes this same method to capture enrollment during annual Open Enrollment. However, this method is not utilized year-round. Ideally, online enrollment would be available year-round.
- **Possible integration with new benefit administration system:** DHR understands that, in the near future, the State may be conducting a separate RFP for a new benefit administration system. and it is possible that this will result in a change to the current system. DHR understands that there would likely be a multi-year implementation process following that announcement. This could create a potential opportunity to improve upon the challenges noted above, depending on the capabilities available within the new benefit administration system.

FSA Administration

Plan Information:

- **Number of enrollees for January 1, 2024 –**

Health Care FSA only: 7,812
Dependent Care FSA only: 199
Both: 586
Total Count: 8,597

- **Enrollment** – Currently, a new employee can enroll in the plan the first of the month following ninety (90) days of employment. Terminations and allowable election changes will be processed as they occur and noted on the bi-weekly file. As of July 1, 2024, the State will be updating the 90-day waiting period to align with recent changes made to the medical/dental/vision plans, which allow for enrollment on the first of the month following the date of hire. The Eligibility and Enrollment Rules which the FSA plan will closely mirror can be found here: <https://dhr.delaware.gov/benefits/policies-procedures.shtml>
- **Different Employee Pay Periods** – Most employees are paid twenty-six (26) times per year. However, there are a certain number of teachers who are paid twenty-two (22) times per year, as well as other situations in which employees are on unpaid leave. The plan stipulates that, upon return to paid status, the deductions will be increased to account for the unpaid time period in equal installments, until the end of the plan year.

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This will impact the design of any “salary reduction” agreement and the proper administration of appropriate payroll deductions.

- **Grace Period** – The State currently offers a grace period in which participants may incur expenses from July 1 through September 15 and be reimbursed from the previous year's FSA. At this time, the State has opted to continue offering the grace period for its participants in lieu of implementing changes to the existing “use-or-lose” rule defined under IRS Notice 2013-71.
- **Overpayments** – Any overpayments to the participants as a result of processing errors will be the responsibility of the winning vendor at the winning vendor’s expense.
- **Annual Employee Contributions** – These follow the federal guidelines and are as follows for the plan year beginning on July 1, 2024:
 - a. Dependent Care: maximum of \$5,000 joint / \$2,500 for married filing separately (\$50 minimum)
 - b. Health Care: maximum of \$3,200 per year (\$50 minimum)

PTC Administration

Plan Information:

- **Number of enrollees for March 19, 2024 –**

Colonial Parking: 108 (payroll deduction)

Wilmington Parking Authority: 17 (payroll deduction)

Fleet Link (vanpool program): 61 (payroll deduction)

Vanpool: 6 (reimbursement)

Parking: 20 (reimbursement)

DART: 4 (DE transit, reimbursement)

SEPTA: 1 (PA transit, reimbursement)

Total Count: 217

Please note there is limited public transportation in the State of Delaware, so the level of participation will be lower than a similar sized group in a more metropolitan setting.

The State’s PTC allows employees (including part-time and contracted employees) to set aside pre-tax money to help pay for out-of-pocket parking, van pooling, or mass transit expenses incurred as they travel to work. Employees authorize the State to deduct a pre-tax amount for parking or vanpool/mass transit from each paycheck up to IRS limit. Any elected amount over the IRS limit should be taken as a separate post-tax deduction. Eligible employees can enroll, change, or cancel their enrollment anytime in this program through the administrator’s enrollment website.

Currently, 61 employees utilize the State’s vanpool program, called Fleet Link. This program rents vans to State employees for a group of four (4) or more at a monthly cost of \$911.69 for a 7-passenger van and \$1,037.82 for a 15-Passenger van. This monthly cost is

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the same, regardless of the number of passengers. Fleet Link allows each vanpool to determine how the monthly cost is to be divided among the passengers. Some vanpools divide the cost equally, while others exclude the driver then divide the cost equally. (The latter option is sometimes used when only the driver incurs a parking cost.)

Enrollment in the PTC program is mandatory if a participant is a Fleet Link rider. If a participant rides in a Fleet Link vanpool, the deduction information is collected and sent via an Excel spreadsheet from Fleet Link to the vendor on a bi-weekly basis. It is then the vendor's responsibility to upload that information in a timely manner and take the proper deductions. The vendor will then reimburse the State's Fleet Link Division each month based on deductions taken.

Employees may also utilize (at their cost for reimbursement) the State's Delaware Transit Corporation statewide bus service, known as DART, and the Philadelphia area public transportation system, known as SEPTA.

The vendor arranges payment directly to parking garages in the City of Wilmington and offer vouchers to participants. Employees may request a reimbursement of unspent funds in a voucher. In addition, there are approximately 4,654 State employees that work in the downtown Wilmington area that may utilize parking services.

COBRA Administration

The services outlined in this RFP apply to all health plans offered by the State, including medical, dental, FSA and vision. In calendar year 2023, there were 4,869 COBRA qualifying events.

New hire and qualifying event information is distributed to the COBRA vendor each week through various file feeds by the State's and the Participating Group's payroll systems (PHRST and NEBS, respectively). Qualifying event notifications for State of Delaware pensioners is entered manually by the Office of Pensions into the COBRA administration system. The COBRA vendor is then responsible for notifying the medical, dental, and/or vision vendors of enrollment changes. The COBRA vendor sends email notifications to the medical vendors and manually enters enrollments in the dental and vision vendors administration systems.

Representatives from DHR and the Office of Pensions have secure, role-based remote access to the COBRA vendor's administration system.

FSA plan eligible enrollments should be supported by the awarded COBRA vendor; this would be applicable to State of Delaware employees and their dependents only.

The COBRA vendor maintains a manual billing process for the Diamond State Port Authority Group, which consists of 7 retired plan participants, all of whom are enrolled in the Highmark Special Medicfill Medicare Supplement Plan with prescription coverage. Currently, the group is under a direct pay arrangement and monthly fees are billed and collected by the COBRA vendor manually.

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For additional information on COBRA transaction volumes for calendar year 2023 and year-to-date 2024, see Attachment 21.

Health Savings Account Administration

In an effort to continue attracting and retaining high-quality talent, and to position the State as an “employer of choice,” the State may offer an IRS-qualified HDHP with an HSA (“HSA plan”) in the future, with an effective date of no earlier than July 1, 2025. The SEBC has determined that any such plan offering would be provided as an option alongside the other existing medical plan options in place today.

B. Scope of Services

The SEBC desires to contract with an organization specializing in providing FSA and PTC benefit programs along with COBRA administration services for large municipalities and State governments or with similar experience in depth and scope of services in the private sector. The organization must have prior experience directly related to the services requested in this RFP and must be able to clearly demonstrate their ability to meet the general evaluation requirements in Section III.B.

A general overview of the Scope of Services is as follows:

Flexible Spending Account Program – Health Care and Dependent Care

1. Administer the FSA program according to the IRS regulations.
2. Provide notification of changes in regulations affecting the plans and provide advice to the State on ways to enhance employees’ understanding and participation in the plans.
3. Provide confirmation statements after the Open Enrollment period to each enrolled participant.
4. Produce all communication materials for Open Enrollment and ongoing administration of the plan.
5. Support ongoing administration of the program in accordance with State requirements for member reimbursement, billing and reporting as outlined in Attachment 17.A.
6. Agree to accept the State’s existing electronic file formats (see Attachment 20).
7. Provide ongoing reporting according to the State’s requirements as outlined in the Master Report List for FSA/PTC provided as Attachment 17.A.

Pre-Tax Commuter Program

1. Operate a pre-tax commuter program in compliance with federal tax laws, including any reporting requirements, and applicable State laws and regulations.
2. Manage claim processing/reimbursement and voucher delivery.
3. Produce all communication materials for ongoing administration of the plan.
4. Maintain on the State’s behalf, including enrollment, premium and claim reconciliation.
5. Agree to accept the State’s existing electronic file formats (see Attachment 20).

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6. Provide monthly reports of utilization (see Attachment 17.A).
7. Provide ongoing reporting according to the State's requirements as outlined in the Master Report List for FSA/PTC provided as Attachment 17.A.

COBRA

1. Administer COBRA according to all regulatory requirements.
2. Provide applicable Notices, by first class mail.
3. Collect premiums and forward to the State.
4. Provide ongoing reporting according to the State's requirements as outlined in the Master Report List for COBRA provided as Attachment 17.B.
5. If selected as the new vendor, accept electronic transfer of information from the State's incumbent vendor, as part of the transition process, including information for participants in a waiting status.
6. Provide a flexible administration system and operation procedures that can accommodate the State's coverage rules (e.g., end of month termination date vs day after QE date for divorce cases etc. per the State's Eligibility and Enrollment Rules available on the SBO website <https://dhr.delaware.gov/benefits/notices/>
7. Agree to administer Direct Pay services for the divested Diamond Port Authority Group (as mentioned in Section II.A.2) as part of the broader COBRA services that would be provided to the State services that would be provided to the State.

For a more detailed Scope of Services, please refer to the Response to Scope of Services Questionnaire ("Questionnaire") contained at Attachment 25.

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Vendor specializing in providing FSA and PTC benefit programs along with COBRA administration services for large municipalities and State governments or with similar experience in depth and scope of services in the private sector.
2. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful vendor shall either furnish the State with proof of State of Delaware Business Licensure or initiate the process of application where required.

3. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
4. Complete all appropriate attachments and forms as identified within the RFP.

B. General Evaluation Requirements

1. Financial Terms
2. FSA & PTC Administration
3. COBRA Administration
4. Experience and Qualifications
5. Account Management
6. Tools and Technology
7. Implementation and Communication
8. Responsiveness

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* [§ 6981](#).

2. Obtaining Copies of the RFP

This RFP is available in electronic form through the State of Delaware Procurement website at <https://bids.delaware.gov/>. Paper copies of this RFP will not be available.

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact(s) no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contacts

All requests, questions, or other communications about this RFP shall be made in writing as set forth more fully herein. Address all communications to the person listed below or through ProposalTech via the Messaging function; communications made to other State of Delaware personnel – including members of the SEBC and the Proposal Review Committee – or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP Designated Contact(s).

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To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

5. Consultants and Legal Counsel

The State may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Except as specifically set forth in this RFP, vendors shall not contact the State's consultant(s) on any matter related to the RFP. Vendors shall not contact the State's legal counsel on any matter related to the RFP.

6. Contact with State Employees

Direct contact with State of Delaware employees or personnel – including members of the SEBC and the Proposal Review Committee – other than the State of Delaware Designated Contact(s) regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting such individuals risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Respond

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to respond to the RFP. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The State of Delaware reserves the right to refuse to consider any proposal from a vendor who:

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

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a proposal, each vendor shall be deemed to acknowledge 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. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State of Delaware reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted electronically using the Proposal Technologies Network, Inc. (ProposalTech) application, no later than 1:00 p.m. ET on Thursday August 15, 2024. Any proposal received after this date and time shall not be considered. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

a. General Directions for Electronic Submission –

The RFP process is being conducted electronically using the ProposalTech application. The official proposal submission process is via ProposalTech. For any organization that may be unfamiliar with this Web-based tool, ProposalTech representatives will schedule training sessions at your convenience. In advance of the accessing the electronic Questionnaire (Attachment 25) on the ProposalTech website, you may view an online training demo of the system and its functionality. This demo takes approximately five minutes and will improve your understanding of the system’s functionality. Click on the link below to view the flash demo: http://www.proposaltech.com/help/docs/response_training_798x599.htm.

If you have any questions regarding the registration process or have technical questions specific to ProposalTech, contact ProposalTech Support at (877) 211-8316 x84.

b. Accessing the electronic Questionnaire –

In order to register for the Questionnaire (Attachment 25), go to <http://www.proposaltech.com/home/app.php/register>.

Enter your email address into the field provided. No registration code is necessary. Click “Begin Registration.” If you already have an account with ProposalTech, it will be listed on the registration page. If you do not, you will be asked to provide company information. Once your account has been confirmed, check the appropriate box for the “SOD FSA PTC COBRA RFP” and click the “Register” button. An invitation will be emailed to you within fifteen minutes. If you have any questions regarding the registration process, contact ProposalTech Support at (877) 211-8316 x84.

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The primary contact should access the website to initiate review and acceptance of the Questionnaire as noted above. Primary contacts will be responsible for establishing permission to access the Questionnaire for other individuals within their organizations. Multiple users from your organization may access the Questionnaire simultaneously.

Detailed instructions for the completion and submission of your Questionnaire responses will be found in the RFP. ProposalTech will be available to assist you with technical aspects of utilizing the system.

If you would like to schedule a ProposalTech training session please contact ProposalTech at (877) 211-8316, choose option 4, or send an email to support@proposaltech.com.

c. Attachments and Appendices –

Some of the attachments and appendices require a Non-Disclosure Agreement (“NDA”). The NDA been provided as Attachment 9 and must be signed and returned after your organization submits your Intent to Submit Proposal (see Section VI.D for instructions on submitting your Intent to Submit Proposal). After indicating the data destruction term and signing the NDA, scan all the pages of the NDA and send a PDF of the executed NDA to the RFP Administrator via the Messaging function within ProposalTech.

d. Directions for the Redacted Electronic Copy, if applicable –

- i. Electronic submissions must include a separate copy of the proposal containing redactions of information designated as confidential business information as defined herein– together with a letter from legal counsel – pursuant to and as set forth more fully in Section IV.B.2, if applicable. The State is not responsible for incorrect redactions or reviewing your submission to determine whether or not the information asserted as confidential business information is redacted. Mistakes in redactions are the sole responsibility of the interested vendor.
- ii. PDF – A *complete* electronic copy of your entire redacted RFP response is needed in a PDF format; please do not submit only the pages that require redaction. ProposalTech has functionality that allows you to download a PDF copy of your entire proposal so you can redact any information you as assert to be confidential business information. If you have any questions regarding how to download a copy of your entire proposal, please contact ProposalTech Support at (877) 211-8316 x84. You must include all the documents as directed above in the *General Directions for Electronic Copies* above. For large sections or appendices, please include a sheet that identifies the material and the basis for the redaction, not pages of black redactions.

e. Follow-Up Responses and Finalist Presentations

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- i. The same format requirements apply to follow-up responses and presentation materials. **If information in any of the follow-ups and presentation matches the type that was requested for a confidential business information determination, you must upload an updated redacted electronic version of the document(s), together with a letter from your legal counsel containing the information required in Section IV.B.2.**
- ii. Finalist Presentation – You will be asked for a non-redacted electronic copy that includes PDFs of any supplemental materials or handouts.
- iii. If there is a new type of information that was not included in your original proposal and you assert to be confidential business information, you must submit a new redacted copy – together with a new letter from your legal counsel – consistent with the requirements contained herein and in Section IV.B.2.

3. Proposal Modifications

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 hour and date specified as the deadline for submission of proposals.

4. Proposal Costs and Expenses

The State will not pay any costs incurred by any vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor’s conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the vendor at least through June 30, 2025. The State reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped electronically in ProposalTech.

7. Proposal Opening

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with Executive Order #31 and Delaware Code.

8. Non-Conforming Proposals

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Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive, or a mere formality shall reside solely with the State.

9. Concise Proposals

The State discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State's interest is in the quality and responsiveness of the proposal.

10. Realistic Proposals

It is the expectation of the State that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. All proposals are subject to FOIA's public disclosure obligations.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State of Delaware respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure, or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

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Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate pdf containing “Confidential Business Information” in the document title and include the specific RFP number. The submission must include a letter from the vendor’s legal counsel describing the information designated as confidential business information representing in good faith that the information is not “public record” as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document or portion thereof meets the said definitions.

If a vendor is providing any information that the vendor designates as confidential business information for the purpose of exclusion from the public record under 29 Del. C. § 10002, Delaware Freedom of Information Act, the vendor must follow the directions for submission outlined herein and within Section IV.B.2. A vendor’s allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State’s absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, vendor(s) assume the risk that confidential business information included in a proposal may enter the public domain.

12. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the “**prime contractor**”. The “**prime contractor**” must be the joint venture’s contact point for the State of Delaware and be responsible for the joint venture’s performance under the resulting contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State, and approval of a request to subcontract shall not in any way relieve the vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

a. Primary Vendor

The State expects to negotiate and contract with only one “prime vendor”. The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

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Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State from the full exercise of its options under Section IV.B.17 regarding multiple source contracting.

b. Sub-contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. The resulting contract may allow subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by the State.

c. Multiple Proposals

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

13. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. The resulting contract may allow subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by the State.

14. Discrepancies and Omissions

Each vendor 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 vendor.

Should a vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, the vendor shall notify the State of such findings in writing at least ten business (10) days before the proposal opening by submitting the RFP Discrepancies, Revisions, and Omissions Tracking Chart, Attachment 10 via the messaging function in ProposalTech. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective

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proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the State, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals as set forth herein.

a. RFP Question and Answer Process

The State will allow written requests for clarification of the RFP. All questions shall be received no later than **Friday, July 26, 2024 at 9:00 am**. All questions will be consolidated into a single set of responses and posted in ProposalTech and on the State's website at bids.delaware.gov by **Friday, August 2, 2024**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

- Section number
- Paragraph number
- Page number
- Text of passage being questioned

15. State's Right to Reject Proposals

The State reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of 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 as the State may deem necessary in the best interest of the State of Delaware.

16. State's Right to Cancel Solicitation

The State reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State. A vendor's participation in this process may result in the State selecting the organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State to execute a contract nor to continue negotiations. The State may terminate negotiations at any time and for any reason, or for no reason.

17. State's Right to Award Multiple Source Contracting

Pursuant to 29 Del. C. [§ 6986](#), the State may award a contract for a particular professional service to two or more vendors if the State makes a determination that such an award is in the best interest of the State of Delaware.

18. Potential Contract Overlap

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State of Delaware. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State of Delaware reserves the right to reject any or all proposals in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

19. Supplemental Solicitation

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State of Delaware.

20. Notification of Withdrawal of Proposal

A vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State prior to the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

21. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at bids.delaware.gov. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

22. Exceptions to the RFP

Any exceptions to the RFP, or the terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the State.

23. Business References

Provide at least six (6) business references consisting of three (3) current and three (3) previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

24. Award of Contract

The final award of a contract is subject to approval by the SEBC. The SEBC has the sole right to select the successful vendor(s) for award, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State and the subsequent full execution of a written contract with DHR will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the SEBC may award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the SEBC is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate SEBC approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with DHR on behalf of the SEBC; remaining vendors will be notified in writing of their selection status.

25. Cooperatives

Vendors who have been awarded similar contracts through a competitive bidding process with a cooperative are welcome to submit the cooperative pricing for this solicitation. **State of Delaware terms will take precedence.**

26. Non-Collusion Statement

Vendors will be required to submit a *Non-Collusion Statement* (Attachment 2) and include it in the proposal package via ProposalTech.

C. RFP Evaluation Process

The State shall make an initial determination regarding which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981](#) and [6982](#). Professional services for this solicitation are considered under 29 *Del. C.* § 6982(b). The State may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors.

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The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Review Committee

The Proposal Review Committee (“PRC”) may be comprised of individuals and agency representatives as follows:

- Department of Human Resources
- Office of Management and Budget
- Controller General’s Office
- Department of Health and Social Services
- State Insurance Commissioner’s Office
- State Treasurer’s Office
- Chief Justice of the Supreme Court
- Lieutenant Governor’s Office
- Policy Director of the American Federation of State, County and Municipal Employees
- Executive Director of the Delaware State Trooper Association
- State retiree appointed by the Governor

An evaluation team will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The PRC shall make a recommendation regarding the award to the SEBC, who shall have final authority, subject to the provisions of this RFP and 29 Del. C. § 6982(b), to award a contract to the successful vendor in the best interests of the State of Delaware

2. Proposal Selection Criteria

The PRC shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor’s proposals. All assignments of points shall be at the sole discretion of the PRC.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State to be essential for use by the PRC in the proposal evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible vendor and participate in the PRC’s consideration for award. Proposals which do not meet or comply with the instructions

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of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the State.

The PRC reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP. The State makes no commitments, expressed or implied, that this process will result in a business transaction with any vendor.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification of proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time. This includes discussions and negotiations regarding price, performance guarantees, and other matters may be conducted with vendors who submit proposals determined to be reasonably acceptable of being selected for award, but proposals may be accepted without such discussions. The PRC reserves the right to further clarify and/or negotiate with the vendors following completion of the evaluation of proposals but prior to contract execution, if deemed necessary by the State of Delaware. ***If any portion of a proposal does not receive a clarifying question or any other response from the State of Delaware, the non-response does not infer acceptance of that portion of the proposal by the State of Delaware.*** The PRC also reserves the right to move to other vendors if negotiations do not lead to a final contract with the initially selected vendor. The PRC reserves the right to further clarify and/or negotiate with the proposing firm(s) on any matter submitted.
- Consider historical information regarding the vendor, whether gained from the vendor’s proposal, question and answer conferences, references, or any other source during the evaluation process.

Criteria Weight

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

Topic	Points Awarded	Description
Financial Terms	20 points	<ul style="list-style-type: none"> ▪ Competitive administrative fees. ▪ Offer favorable financial guarantees for vendor's performance in administering the program(s). ▪ Offer an allowance/credit for implementation-related activities such as communications, audits and offset any third-party vendor fees associated with implementing single sign-on and enrollment automation. ▪ Waived annual fee for FSA debit card.

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Topic	Points Awarded	Description
FSA & PTC Administration	15 points	<ul style="list-style-type: none"> ▪ Ability to automate new hire enrollment process. ▪ Ability to administer single sign-on from the State’s enrollment portal for employees to enroll in FSA directly in vendor’s system.
COBRA Administration	15 points	<ul style="list-style-type: none"> ▪ Ability to help members manage their COBRA benefits effectively based on the vendor's administrative policies, banking arrangements, member notices, etc. ▪ Ability to automate the current process for notifying the State's other health care vendors of COBRA election changes due to qualifying events
Experience and Qualifications	15 points	<ul style="list-style-type: none"> ▪ Extensive experience administering the requested scope of services. ▪ Extensive experience administering the requested scope of services with public sector clients. ▪ Demonstrated ability to use the same operational and administrative process (e.g., eligibility file processing, claims adjudication) that are currently in place with the State today and therefore require minimal customization. ▪ Has outstanding references that demonstrate an ability to meet the State’s needs.
Account Management	10 points	Experienced designated resources (e.g., account manager, implementation manager, customer support staff) to the State's account for implementation, contract development and ongoing account management.
Tools and Technology	10 points	<p>Vendor offers online tools and resources (for each benefit program(s), as applicable) that:</p> <ol style="list-style-type: none"> 1) will provide plan participants with prompt access to plan documents and compliance-related materials, 2) will allow plan participants to conduct self-service banking and other individual account management activities, and 3) provide robust account management tools for the SBO.

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Topic	Points Awarded	Description
Implementation and Communication	10 points	<ul style="list-style-type: none"> ▪ Demonstrated ability to implement benefit program(s) for a seamless transition. ▪ Willingness and proven ability by the team(s) to develop and launch a comprehensive communication plan to eligible employees before and during Open Enrollment.
Responsiveness	5 points	Compliance with the submission requirements of the proposal including format, clarity, conformity, realistic responses, and completeness, as well as responsiveness to requests during the evaluation process.
Total Points	100 points	

Vendors 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 vendor’s capabilities so the responding vendor should be detailed in their proposal responses.

3. Proposal Clarification

The PRC may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The State may contact any customer of the vendor, whether or not included in the vendor’s reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations/Interviews

After an initial determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations/ interview with the PRC. This may be done in person in Dover, Delaware or virtually at the discretion of the SEBC and PRC.

The selected vendors will have their oral presentations/interviews scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

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The vendor representative(s) attending the oral presentation/interview shall be technically qualified to respond to questions related to the proposed system and its components. All of the vendor's costs associated with participation in oral presentations/interviews and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

A summary of each vendor finalist's proposal will be provided to the PRC in advance of the finalist oral presentations/interviews. Each vendor's oral presentation must be submitted before the finalist meeting to ensure adequate time for review and distribution.

V. Contract Terms and Conditions

A. Contract Use by Other Agencies (if applicable)

REF: **29 Del. C. §§ 6904(e)**. If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

B. Cooperative Use of Award (if applicable)

As a publicly competed contract awarded in compliance with **29 Del. C. §§ 69**, the resulting contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in the contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

C. General Information

- 1.** The term of the contract between the successful vendor and DHR shall be for three years beginning July 1, 2025 and ending June 30, 2028 with two optional extensions for a period of one (1) year for each extension.
- 2.** It is imperative that the contract drafting and finalization process be timely and accurately reflect the minimum requirements and other applicable contractual terms in the RFP. The vendor is expected to use the State of Delaware's professional agreement contract template (Appendix B) and incorporate all the terms of the RFP, their proposal and follow-up responses so that wholesale changes are not required. The vendor's failure to meet this requirement may result in a fee as set forth in the Performance Guarantees (Attachment 16).
- 3.** The selected vendor will be required to enter into a written agreement with DHR on behalf of SEBC. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the

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standard contract are subject to review and approval by the State. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.

4. The selected vendor or vendors will be expected to enter negotiations with DHR on behalf of the SEBC, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
5. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
6. The successful vendor shall promptly execute a contract incorporating the terms of this RFP prior to the start date of the contract. No vendor is to begin any service prior to receipt of a signed State of Delaware purchase order, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the proposal specifications and the special instructions, once it is received by the successful vendor.
7. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
8. The State reserves the right to extend the contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.
9. Vendors are not restricted from offering lower pricing at any time during the contract term.

D. Collusion or Fraud

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

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor 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 State of Delaware participated directly or indirectly in the vendor's proposal preparation.

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Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(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.

E. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with members of the SEBC, 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.

F. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any member of the SEBC or employee of the State to leave the State's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State's contracting officer. Solicitation of State employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State employee who has initiated contact with the vendor. However, State employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

G. General Contract Terms

1. Independent Contractors

The parties to the resulting contract shall be independent contractors to one another, and nothing herein shall be deemed to cause the agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation,

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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.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may provide working space and sufficient supplies and material to augment the vendor's services.

2. Temporary Personnel are Not State Employees Unless and Until They are Hired (if applicable)

The vendor shall agree that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this RFP shall remain the employee(s) of the vendor for all purposes including any required compliance with the Affordable Care Act by the vendor. The vendor shall agree that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this RFP must be provided any benefits, including any healthcare benefits by the State of Delaware and the vendor shall agree to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act 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 Solicitation, the vendor shall agree 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 of hire. Nothing herein shall be deemed to terminate the vendor'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 vendor will waive any separation fee provided an employee works for both the vendor 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.

3. Work Performed in a State Building (if applicable)

Awarded vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State of Delaware related to a pandemic or

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other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.

4. ACA Safe Harbor (if applicable)

The State of Delaware and its utilizing agencies are not the employer of temporary or contracted staff. However, the State of Delaware is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act (“ACA”). Therefore, the State of Delaware seeks to utilize the “Common-law Employer Safe Harbor Exception” under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an “Additional Fee” with respect to the employees electing to obtain health coverage from the vendor.

The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the vendor but does not state the required amount of the fee. The State of Delaware requires that all vendors shall identify the Additional Fee to obtain health coverage from the vendor and delineate the Additional Fee from all other charges and fees. The vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e., per employee, per invoice, etc.). The State of Delaware will consider the Additional Fee and prior to award reserve the right to negotiate any fees offered by the vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

5. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2101 or through the Delaware Department of Insurance, whichever is applicable.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or authorization obtained through the Delaware Department of Insurance, whichever is applicable, or initiate the process of application where required.

An application for a Delaware Business License may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue and/or the Delaware Department of Insurance. Failure to comply with the

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State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

6. Notice

Any notice to the State of Delaware required under the resulting contract shall be sent by registered mail to:

**State of Delaware
Department of Human Resources/Statewide Benefits Office
841 Silver Lake Boulevard, Suite 100
Dover, DE 19904
CONTACT: Faith Rentz**

7. Indemnification

a) General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance of work or services in connection with the contract.

b) Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including 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 State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor 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 vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- (1) Procure the right for the State of Delaware to continue using the Product(s);
- (2) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or

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(3) 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 State of Delaware agrees to and accepts in writing.

8. Insurance

- a) The vendor shall recognize that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under the resulting contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under the contract.
- b) The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under the contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
- c) As a part of the contract requirements, the vendor must obtain at its own cost and expense and keep in force and effect during the term of the contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All vendors must carry the following coverage.

(1) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.

(2) Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.

(3) Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to the vendor pursuant to the contract as well as all units used by the vendor, regardless of the identity of the registered owner, used by the vendor for completing the Work required by the contract to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

(a) \$1,000,000 combined single limit each accident, for bodily injury;

(b) \$250,000 for property damage to others;

(c) \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;

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(d) \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* §2118; and

(e) Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

d) The successful vendor must carry at least one of the following depending on the scope of work being performed.

(1) Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate

(2) Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate

(3) Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

e) Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

f) Before any work is done pursuant to the contract, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Department of Human Resources, SBO
Contract No: DHR24005-FSA_COBRA
State of Delaware
841 Silver Lake Boulevard, Suite 100
Dover, DE 19904

g) Nothing contained herein shall restrict or limit the vendor's right to procure insurance coverage in amounts higher than those required in the contract. To the extent that the vendor procures insurance coverage in amounts higher than the amounts required in the contract, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

h) To the extent that vendor has complied with the terms of the contract and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of the contract, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

i) In no event shall the State of Delaware be named as an additional insured on any policy required under the contract.

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j) The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded vendor(s). Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

9. Performance Requirements

The selected vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work in the contract in compliance with any and all federal and State laws, and County and local ordinances, regulations and codes.

10. BID BOND

There is no Bid Bond Requirement.

11. PERFORMANCE BOND

There is no Performance Bond requirement.

12. Vendor Emergency Response Point of Contact

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State of Delaware, the State of Delaware may negotiate, as may be authorized by law, emergency performance from the vendor to address the immediate needs of the State of Delaware, even if not contemplated under the original contract or procurement. Payments are subject to appropriation and other payment terms.

13. Warranty

The vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State of Delaware's requirements.

14. Costs and Payment Schedules

All contract costs must be as detailed specifically in the vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written

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consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

15. Liquidated Damages

The State of Delaware may include in the final contract liquidated damages provisions for non-performance.

16. Dispute Resolution

At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to the final contract promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of the contract. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their 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 shall not be rendered inadmissible.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to the contract shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The State of Delaware reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

17. Remedies

Except as otherwise provided in this solicitation, including but not limited to Section V.G.16 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and vendor arising out of, or relating to, this solicitation, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

18. Termination of Contract

The contract resulting from this RFP may be terminated as follows by the State of Delaware:

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a) Termination for Cause

If, for any reasons, or through any cause, the vendor fails to fulfill in timely and proper manner its obligations under the contract, or if the vendor violates any of the covenants, agreements, or stipulations of the contract, the State of Delaware shall thereupon have the right to terminate the contract by giving written notice to the vendor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the vendor under the contract shall, at the option of the State of Delaware, become its property, and the vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State of Delaware.

On receipt of the contract cancellation notice from the State of Delaware, the vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not affect or prevent the contract cancellation unless the State of Delaware provides a written acceptance of the vendor response. If the State of Delaware does accept the vendor's method and/or action plan to correct the identified deficiencies, the State of Delaware will define the time by which the vendor must fulfill its corrective obligations. Final retraction of the State of Delaware's termination for cause will only occur after the vendor successfully rectifies the original violation(s). At its discretion, the State of Delaware may reject in writing the vendor's proposed action plan and proceed with the original contract cancellation timeline.

b) Termination for Convenience

The State of Delaware may terminate the contract any time by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State of Delaware, become its property and the vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State of Delaware.

c) Termination for Non-Appropriations

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the contract shall be terminated as to any obligation of the State of Delaware requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

d) Data and Participant Records

In the event of contract termination, Vendor shall electronically transfer to the State of Delaware (or to a successor administrator) within thirty (30) days of termination all data and participant records necessary for the continued administration of the plan. Vendor must agree to continue operations until the transfer of data has been completed.

19. Non-discrimination

In performing the services subject to this RFP the vendor, 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 successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

20. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the vendor for the purpose of securing business. For breach or violation of this warranty, the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

21. Vendor Activity

No activity is to be executed in an offshore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor 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.

22. Vendor Responsibility

The State of Delaware will enter into a contract with the successful vendor(s). The successful vendor(s) shall be responsible for all products and services as required by this RFP whether or not the vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of the State.

23. Personnel, Equipment and Services

1. Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under the contract.
2. All of the equipment and services required hereunder shall be provided by or performed by the vendor or under its direct supervision, and all personnel,

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including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

3. None of the equipment and/or services covered by the contract shall be subcontracted without the prior written approval of the State of Delaware. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State of Delaware.

24. Fair Background Check Practices

Pursuant to 29 Del. C. [§ 6909B](#), the State of Delaware does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State of Delaware are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§ 711\(g\)](#) for applicable established provisions.

25. Vendor Background Check Requirements

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on 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 that 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 contract vendors. Should an individual be identified and the vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the State of Delaware's sole discretion.

By request of the State of Delaware, the vendor(s) shall provide a list of all employees serving an awarded contract and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the vendor to penalty, including contract cancellation for cause.

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. The vendor(s) shall be responsible for the background check requirements of any authorized subcontractor providing service to the State of Delaware's contract.

26. Reserved

27. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State of Delaware. The vendor will seek written permission to use any product created under the contract.

28. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor may constitute the contract between the State of Delaware and the vendor. 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, the RFP, vendor's response to the RFP, and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

29. Applicable Law

The laws of the State of Delaware shall apply, except where federal Law has precedence. The successful vendor shall consent to jurisdiction and venue in the State of Delaware.

In submitting a proposal, vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- a) the laws of the State of Delaware;
- b) the applicable portion of the federal Civil Rights Act of 1964;
- c) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- d) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury;
- e) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.
- f) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (45 C.F.R. Parts 160, 162 and 164, as may thereafter be amended); Electronic Data Interchange (EDI) Rule (45 C.F.R. Parts 160, 162 and 164, as may thereafter be amended); and Privacy laws that are relevant to the scope of services covered by the resulting contract.

If any vendor fails to comply with (a) through (f) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing federal and State laws, and County and local ordinances,

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regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

30. Severability

If any term or provision of the contract is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions thereof or the whole of the contract, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties therein set forth.

31. Assignment of Antitrust Claims

As consideration for the award and execution of the contract by the State of Delaware, the vendor shall grant, convey, sell, assign, and transfer to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it has or may thereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to the contract. Upon either the State of Delaware's or the vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State of Delaware and vendor shall meet and confer about coordination of representation in such action.

32. Scope of Agreement

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

33. Affirmation

The vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

34. Audit Access to Records

The vendor shall maintain books, records, documents, and other evidence pertaining to the contract to the extent and in such detail as shall adequately reflect performance thereunder. The vendor shall agree to preserve and make available to the State of Delaware, upon request, such records for a period of seven (7) years from the date services were rendered by the vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the contract.

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Upon notice given to the vendor, representatives of the State of Delaware or other duly authorized State or federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to the contract. The cost of any contract audit disallowances resulting from the examination of the vendor's financial records will be borne by the vendor. Reimbursement to the State of Delaware for disallowances shall be drawn from the vendor's own resources and not charged to cost of the contract or cost pools indirectly charging contract costs.

35. IRS 1075 Publication (If Applicable)

1. Performance

In performance of the contract, the vendor shall agree to comply with and assume responsibility for compliance by his or her employees with the following requirements:

All work will be performed under the supervision of the vendor or the vendor's responsible employees.

The vendor and the vendor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any federal tax returns or federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of the contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone other than an officer or employee of the vendor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under the contract will be subcontracted without prior written approval of the IRS.

The vendor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the vendor fails to provide the safeguards described above.

The vendor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

2. Criminal/Civil Sanctions

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized therein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of the contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the vendor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency

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not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a vendor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Vendors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the vendor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

3. Inspection

The IRS and the State of Delaware, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the vendor to inspect facilities and operations performing any work with FTI under the contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the vendor is found to be noncompliant with contract safeguards.

36. Other General Conditions

- a) Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- b) Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- c) Regulations** – All equipment, software and services must meet all applicable local, State and federal regulations in effect on the date of the contract.
- d) Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the State of Delaware.
- e) Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.

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- f) Payment** – The State of Delaware reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each administrative invoice within thirty (30) days after the date of receipt of a correct invoice. The agencies will authorize and process for payment of each claim invoice within 24 hours. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.
- g) W-9** - The State of Delaware requires registration and completion of a W-9 through the Supplier Public Portal available at <https://esupplier.erp.delaware.gov> to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record.
- h) Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number DHR24005-FSA_COBRA on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.
- i) Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

VI. RFP Miscellaneous Information

A. No Press Releases or Public Disclosure

The State reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State.

B. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

C. Production Environment Requirements

The State requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

D. Intent to Submit Proposal –

!!!IMPORTANT!!!

You must indicate your Intent to Submit Proposal via the Messaging function within ProposalTech by Monday, July 22, 2024, no later than 1:00 p.m. ET (local time).

Your proposal will not be accepted if the State does not receive your written confirmation of an Intent to Submit Proposal. Include the following information: company name, mailing and physical address, and the name, title, and email address of the primary contact along with the same information for a secondary contact.

E. Non-Disclosure Agreement

A signed NDA is required in order to receive some of the attachments and appendices noted herein. The NDA has been provided as Attachment 9 and must be signed and returned after your organization submits your Intent to Submit Proposal. After indicating the data destruction term and signing the NDA, scan all the pages of the NDA and send a PDF of the executed NDA via the Messaging function within ProposalTech.

NOTE: Brokers cannot execute the NDA on behalf of their client. Subcontractors cannot obtain the attachments and appendices identified in this RFP as “confidential” directly from the State – these documents must be obtained through the contract they are working with.

Certificate of Destruction - After the RFP process is completed and the contract award is made, the NDA requires that the confidential information be destroyed in a secure manner and a Certificate of Destruction be provided to the State.

F. No Proposal

To assist us in obtaining competitive proposals and analyzing our procurement processes, if you sign into the Questionnaire (Attachment 25) within ProposalTech and choose not to submit a proposal, please complete and return Attachment 1.

G. Definitions

- a. The following terms are used interchangeably throughout this RFP:
 - i. member, participant
 - ii. retiree, pensioner
 - iii. non-payroll group, participating group, non-State group
 - iv. shall, will, and/or must
 - v. Scope of Services, Scope of Work
 - vi. fees, rates
 - vii. rates, premiums

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- b. Customer Service – Services to the members/participants, not the State, SEBC or SBO personnel.
- c. Account Management – Services provided to your client - the State, SEBC and SBO personnel.

H. Best and Final Offer (BAFO)

The State may or may not request improved rates or pricing as a Best and Final Offer (“BAFO”). Therefore, you are encouraged to submit your best pricing initially in your proposal. A BAFO may be requested of finalists.

I. Performance Guarantees

The State expects exceptional client account management and participant customer service from their vendors and is interested in evaluating financial and non-financial performance guarantees. The State of Delaware reserves the right to negotiate both financial and non-financial performance guarantees. If your offer does not receive a clarifying question or any other response from the State of Delaware, it does not infer acceptance.

VII. Attachments

The following attachments shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 - Responses Exception Tracking
- Attachment 4 – Confidential Information Form
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Subcontracting (2nd Tier) Quarterly Report
- Attachment 8 – Office of Supplier Diversity Application
- Attachment 9 – Non-Disclosure Agreement
- Attachment 10 - Discrepancies, Revisions and Omissions Tracking Chart
- Attachment 11 – Data Confidentiality Agreement
- Attachment 12 – Officer Certification Form
- Attachment 13 – Financial Ratings
- Attachment 14 – Business Associate Agreement
- Attachment 15 – Fee Quote
- Attachment 16 - Performance Guarantees
- Attachment 17 - Master Report List
 - A. FSA/PTC
 - B. COBRA
- Attachment 18 – Account Management Survey

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- A. FSA/PTC
- B. COBRA
- Attachment 19 - PTC Payroll Deduction Coverage Schedule
- Attachment 20 - Data File Descriptions and Layouts
 - Confidential, NDA required
- Attachment 21 - COBRA Transaction Volumes
 - Confidential, NDA required
- Attachment 22 – Network Diagram Template
- Attachment 23 – State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement
- Attachment 24 - Cyber Responsibilities, Liability and Insurance
- Attachment 25 – Responses to Scope of Services Questionnaire

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IMPORTANT – PLEASE NOTE

- **Attachment 9 must be completed in ProposalTech**
- **Attachments 1- 5, 9-15 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 20 and 21 are released in ProposalTech after receipt of a signed NDA (Attachment 9).
- **Attachment 25 must be completed in ProposalTech**
- Attachment 7 represent required reporting, which the State will submit on your behalf.

REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by subcontractors who are Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to: name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov).

Accurate 2nd Tier Reports shall be submitted to the Office of Supplier Diversity on the 15th (or next business day) of the month following each quarterly period. For consistency, quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date. *You will be asked for this information and, as stated above, the State will submit this report on your behalf.* For benefit programs, only 2nd Tier Spend fees that can be identified as separate from any bundled pricing and are not employee-pay-all are reported.

NO PROPOSAL REPLY FORM

Contract No. DHR24005-FSA_COBRA

Contract Title: Flexible Spending Account Program, Pre-tax Commuter Program and COBRA Administration

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- _____ 1. We do not wish to participate in the proposal process.

- _____ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:

- _____ 3. We do not feel we can be competitive.

- _____ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.

- _____ 5. We do not wish to sell to the State. Our objections are:

- _____ 6. We do not sell the items/services on which Proposals are requested.

- _____ 7. Other: _____

FIRM NAME

SIGNATURE

_____ We wish to remain on the Vendor's List **for these goods or services.**

_____ We wish to be deleted from the Vendor's List **for these goods or services.**

PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.

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Attachment 2

CONTRACT NO.: **DHR24005-FSA_COBRA**

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Human Resources

It is agreed by the undersigned Vendor that the signed delivery of this proposal represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Human Resources

COMPANY NAME _____	Check one)		Corporation
NAME OF AUTHORIZED REPRESENTATIVE _____			Partnership
(Please type or print) _____			Individual

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

STATE OF DELAWARE
LICENSE NUMBER _____

FEDERAL E.I. NUMBER _____

	Certification type(s)	Circle all that apply
COMPANY CLASSIFICATIONS: CERT. NO.:	Minority Business Enterprise (MBE)	Yes No
	Woman Business Enterprise (WBE)	Yes No
	Disadvantaged Business Enterprise (DBE)	Yes No
	Veteran Owned Business Enterprise (VOBE)	Yes No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes No

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

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

CONFIDENTIAL INFORMATION FORM

Contract No. DHR24005-FSA_COBRA

Contract Title: Request for Proposal for Professional Services for the State of Delaware’s Flexible Spending Account Program, Pre-Tax Commuter Program and COBRA Administration

CONFIDENTIAL INFORMATION FORM

- By checking this box, the Vendor acknowledges that they are **not** providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. Ch. 100, Delaware Freedom of Information Act.

- By checking this box, the Vendor acknowledges that they are following Section IV.B. Introduction, Confidentiality of Documents of the RFP and will comply with redaction instructions in Section II Terms and Conditions, C. Submission of Proposal:
 - 4. Confidential Information, Generally –
 - 5. Directions for Confidential and Proprietary Submission, if any –
 - 6. Directions for the Redacted Electronic Copy, if applicable

Authorized Representative’s Signature

Date Signed

Contract No. DHR24005-FSA_COBRA

Contract Title: Flexible Spending Account Program, Pre-Tax Commuter Program and COBRA Administration

BUSINESS REFERENCES

Please provide a minimum of six business references.

Current Customer #1	
Customer Name	
Service administration implemented (e.g., FSA, PTC and/or COBRA)	
Customer Principal Location	
Number of Eligible Employees (during contract period)	
Number of Subscribers (during contract period)	
Effective Date of Contract	
Date of Termination (if applicable)	
Customer Contact Name	
Job Title	
Address	
Telephone Number	
Email	
Name of Account Manager	
Current Customer #2	
Customer Name	
Service administration implemented (e.g., FSA, PTC and/or COBRA)	
Customer Principal Location	
Number of Eligible Employees (during contract period)	
Number of Subscribers (during contract period)	
Effective Date of Contract	
Date of Termination (if applicable)	
Customer Contact Name	
Job Title	
Address	
Telephone Number	
Email	
Name of Account Manager	

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Current Customer #3	
Customer Name	
Service administration implemented (e.g., FSA, PTC and/or COBRA)	
Customer Principal Location	
Number of Eligible Employees (during contract period)	
Number of Subscribers (during contract period)	
Effective Date of Contract	
Date of Termination (if applicable)	
Customer Contact Name	
Job Title	
Address	
Telephone Number	
Email	
Name of Account Manager	
Previous Customer #1	
Customer Name	
Service administration implemented (e.g., FSA, PTC and/or COBRA)	
Customer Principal Location	
Number of Eligible Employees (during contract period)	
Number of Subscribers (during contract period)	
Effective Date of Contract	
Date of Termination (if applicable)	
Customer Contact Name	
Job Title	
Address	
Telephone Number	
Email	
Name of Account Manager	

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Previous Customer #2	
Customer Name	
Service administration implemented (e.g., FSA, PTC and/or COBRA)	
Customer Principal Location	
Number of Eligible Employees (during contract period)	
Number of Subscribers (during contract period)	
Effective Date of Contract	
Date of Termination (if applicable)	
Customer Contact Name	
Job Title	
Address	
Telephone Number	
Email	
Name of Account Manager	
Previous Customer #3	
Customer Name	
Service administration implemented (e.g., FSA, PTC and/or COBRA)	
Customer Principal Location	
Number of Eligible Employees (during contract period)	
Number of Subscribers (during contract period)	
Effective Date of Contract	
Date of Termination (if applicable)	
Customer Contact Name	
Job Title	
Address	
Telephone Number	
Email	
Name of Account Manager	

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

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Attachment 6

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. DHR24005-FSA_COBRA	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (<i>Signature</i>)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (<i>Signature</i>)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor



**The Office of Supplier Diversity (OSD) has moved to the
Division of Small Business (DSB)**

Supplier Diversity Certification Applications can be found here:
[Certifications - Division of Small Business - State of Delaware](#)

Completed Applications can be emailed to: OSD@Delaware.gov

For more information, please send an email to OSD:
OSD@Delaware.gov or call 302-577-8477

[Subscribe](#) to the OSD Mailing List

New address for OSD:
Carvel State Building
820 N. French Street, 10th Floor
Wilmington, DE 19801

Telephone: 302-577-8477 / Fax: 302-736-7915
Email: OSD@Delaware.gov
Web site: <https://business.delaware.gov/osd/>

Dover address:
(Local applicants may drop off applications here)

99 Kings Highway
Dover, DE 19901
Phone: 302-739-4271

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

NON-DISCLOSURE AGREEMENT WITH CERTIFICATE OF DESTRUCTION

State of Delaware RFP for FSA/PTC Programs and COBRA Administration

This Non-Disclosure Agreement (“Agreement”) is entered into as of July 8, 2024, by and between _____ (“Vendor”) and the State of Delaware Department of Human Resources (“State”).

“Proprietary Information” means information disclosed during the term of this Agreement that is not generally known and is proprietary to the State, or that the State is obligated to treat as proprietary. Proprietary Information shall include, but not be limited to: specifications and information about the State’s past, current or possible future employee, retiree and pensioner health plans; financial information or projections; non-public personal information, including protected health information and de-identified health information; including information obtained from third parties under nondisclosure agreements.

“Purpose of the Disclosure” means a review of aggregated COBRA transaction volume and data file layouts for the purpose of responding to a proposal for FSA, PTC and COBRA benefits administration.

The parties hereby agree as follows:

1. **Property of State.** All right, title and interest in and to the Proprietary Information shall be and remain vested in the State. Nothing in this Agreement shall grant the Vendor any license or right of any kind with respect to the Proprietary Information, other than to review and evaluate such information solely for the Purpose of the Disclosure set forth above. All Proprietary Information is provided on an “AS IS” basis; and all representations and warranties, express or implied, are hereby disclaimed.
2. **Vendor’s Obligations.** Vendor agrees that it will:
 - (a) use commercially reasonable efforts to safeguard the Proprietary Information, and to prevent any unauthorized access, reproduction, disclosure, or use of any of the Proprietary Information other than for the Purpose of the Disclosure and then only in strict compliance with the provisions hereof and subject to any applicable laws;
 - (b) disclose the Proprietary Information only to those officers, directors, employees, consultants and advisors of the Vendor who need to know such information in order to carry

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out the Purpose of the Disclosure and, in the event the employment or engagement of any such person is terminated, the Vendor agrees to use commercially reasonable efforts to recover any Proprietary Information in such person's custody or control;

(c) not remove any copyright notice, trademark notice, or other proprietary legend or indication of confidentiality set forth on or contained in any of the Proprietary Information;

(d) promptly notify the State in writing of any unauthorized use or disclosure of the Proprietary Information, including a detailed description of the circumstances of the disclosure and the parties involved. In the event that Vendor is required to disclose any portion of any Proprietary Information received from the State by operation of law, Vendor may do so, provided the Vendor shall immediately notify the State in writing and Vendor shall provide the State with reasonable cooperation and assistance in obtaining a suitable protective order, and in taking any other steps reasonably necessary, to preserve the confidentiality of any such Proprietary Information; and

(e) On or before July 1, 2025, Vendor shall dispose of all Proprietary Information in its systems or otherwise in its possession or under its control and in all of its forms, for example: disk, CD/DVD, backup tapes, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and the attached certificate of destruction form shall be provided to the State of Delaware.

3. **Exceptions.** Notwithstanding the provisions of Section 2 above, Vendor has no obligation to maintain the confidentiality of any Proprietary Information which: (a) Vendor can demonstrate was known by Vendor without violation of any contractual, fiduciary or other obligation of confidentiality prior to the disclosure thereof by the State; (b) properly came into the possession of Vendor from a third party which was not under any obligation to maintain the confidentiality of such information; (c) has become available to members of the public through no act or fault on the part of Vendor in breach of this Agreement; or (d) Vendor can demonstrate that it was independently developed by or for Vendor without the use of Proprietary Information.
4. **Term.** Vendor's obligations hereunder with respect to Proprietary Information disclosed by the State shall apply to all Proprietary Information provided to Vendor by State with respect to the Purpose of Disclosure terminate upon the Vendor's certification to the State that Vendor has returned or destroyed all Proprietary Information and has not retained any copies thereof.
5. **Equitable Relief.** Vendor agrees that any unauthorized use of the Proprietary Information by Vendor shall cause the State irreparable harm for which its remedies at law would be

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inadequate. Therefore, in addition to any other rights it may have at law, the State shall be entitled to seek equitable relief.

6. **General.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the Proprietary Information listed above, and supersedes all prior and contemporaneous negotiations, discussions and understandings of the parties, whether written or oral. No waiver or modification of any of the provisions of this Agreement shall be valid unless in writing and signed by both of the parties. Vendor's rights under this Agreement may not be assigned to any third party without the State's prior written consent. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining provisions hereof, which shall remain in full force and effect.

VENDOR

**STATE OF DELAWARE
Department of Human Resources**

Authorized Signature
Name
Title

Faith L. Rentz
Director, Statewide Benefits and Insurance
Coverage

Address: _____

Address:
841 Silver Lake Boulevard, Suite 100
Dover, DE 19904

STATE OF DELAWARE
Department of Human Resources

**DELAWARE DEPARTMENT OF TECHNOLOGY AND INFORMATION
CERTIFICATE OF DATA DESTRUCTION
By External Entity/Company**

The information described below was destroyed in the normal course of business pursuant to State of Delaware retention schedule and the following policies and contract(s):

- The Delaware Information Security Policy, Disposal of Electronic Storage Media:
<https://dti.delaware.gov/pdfs/pp/DelawareInformationSecurityPolicy.pdf>
- Data Classification Policy:
<http://dti.delaware.gov/pdfs/pp/DataClassificationPolicy.pdf>
- Disposal of Electronic/Storage Media Policy:
<http://dti.delaware.gov/pdfs/pp/DisposalOfElectronicEquipmentAndStorageMedia.pdf>
- **Request for Proposal (RFP) for FSA, PTC and COBRA Benefits Administration, July 8, 2024:**
On or before July 1, 2025, Vendor will destroy all data files received for the purposes of preparing a proposal in response to this RFP including, but not necessarily limited to, aggregated COBRA transaction volume, and data file layouts. Vendor will send a certified letter to the DTI Chief Security Officer indicating the date, time and confirmation of the destruction along with this completed form and any documentation produced from the data destruction/data wipe software such as a certificate or certification log. Send via certified mail (or by a delivery service such as UPS or FedEx with a signature receipt required) to: Delaware Department of Technology and Information, Office of the Chief Security Officer, 801 Silver Lake Blvd., Dover, DE 19904 (302-739-9500) with a copy via email or regular mail to: State of Delaware DHR, Statewide Benefits Office, Attn: Pamela Barr, 841 Silver Lake Boulevard, Suite 100, Dover, DE 19904.

Company Name and Address:	
Date of Destruction:	Authorized By:
Description of Information Disposed of/Destroyed: aggregated COBRA transaction volume and data file layouts.	
Inclusive Dates Covered: 2023-2024	
METHOD OF DESTRUCTION:	
<input type="checkbox"/> Burning	<input type="checkbox"/> Pulverizing
<input type="checkbox"/> Overwriting	<input type="checkbox"/> Reformatting
<input type="checkbox"/> Pulping	<input type="checkbox"/> Shredding
<input type="checkbox"/> Other:	
Records Destroyed By*:	
If On Site, Witnessed By:	
Department Manager:	

**If the records are destroyed by an outside firm, provide the company name and address and confirm that a contract exists.*

DATA CONFIDENTIALITY AGREEMENT

**Data Exchange for Flexible Spending Account (FSA) and
Pre-Tax Commuter (PTC) programs and COBRA Administration**

This Data Confidentiality Agreement (“Agreement”) is undertaken and effective on the date of the State Employee Benefit Committee (“SEBC”) award on _____ pursuant to the parties’ performance of a certain contract (“Contract”) effective July 1, 2025 by and between the State of Delaware (“State”) by and through the Department of Human Resources (“DHR”) on its own behalf and on behalf of the group health plan it sponsors for employees and other covered persons, collectively referred to hereafter as “Covered Persons”, and _____ (“Vendor”) with offices at _____ (“Parties”).

WHEREAS, the State issued a Request for Proposal for the State of Delaware’s Flexible Spending Account/Pre-Tax Commuter Programs and COBRA Administration, DHR24005-FSA_COBRA on July 8, 2024;

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

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

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

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

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

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

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- b. To populate the Vendor's system so that eligible members may receive FSA/PTC and COBRA services.

- 5. No clause of the Contract shall be considered a waiver of any portion of the terms set forth in the RFP for which a contract has been awarded to the Vendor. The terms of the document entitled *State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement*, which is part of the RFP and a copy of which is attached hereto for reference, shall apply to the test and enrollment files to be provided by the State prior to the effective date of the Contract.

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

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be in effect as of the latest date and year below written.

STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES

VENDOR

Signature
Faith L. Rentz
Director,
Statewide Benefits and Insurance Coverage

Signature
Printed Name: _____

Title: _____

Date

Date

Contract No. DHR24005-FSA_COBRA

Contract Title: Flexible Spending Account Program, Pre-Tax Commuter Program and COBRA Administration

OFFICER CERTIFICATION FORM

Please have an officer of your company review and sign this worksheet to confirm the information is valid. Please include completed form with proposal.

Officer's Statement	
Company's Legal Name	
Company's Marketing Name (if different)	
Street Address	
City	
State	
Zip	
Phone Number	
Fax Number	
Email Address	
Name of Officer Completing Statement	
Title of Officer Completing Statement	
Phone Number of Officer Completing Statement	
Email Address of Officer Completing Statement	

I certify that our response to the Request for Proposal for the State of Delaware's Flexible Spending Account Program, Pre-Tax Commuter Program and COBRA Administration, DHR24005-FSA_COBRA, is complete and accurate to the best of my knowledge and contains no material omissions or misstatements. I acknowledge that the State of Delaware will rely upon the information included in our response to make decisions concerning the administration of these benefits that are offered to their employees.

Officer's Signature

Date Signed

FINANCIAL RATINGS

Carrier's most recent rating or filing (identify date) from the following agencies:

Vendor Ratings	Rating
A.M. Best: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	
Standard & Poor's: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	
Fitch (formerly Duff and Phelps): Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	
Moody's: Rating Status	
Financial Rating (if rated)	
Date (if rated; if not rated, leave response cell blank)	

1. Has there been any change in your organization's ratings in the last two years? If yes, please explain the nature and reason(s) for the change.

2. Are there any outstanding legal actions pending against your organization? If so, please explain the nature and current status of the action(s).

3. What fidelity and surety insurance or bond coverage does your organization carry to protect your clients? Specifically describe the type and amount of the fidelity bond insuring your employees, which would protect this plan in the event of a loss.

4. Does your organization agree to furnish a copy of all such policies for review by legal counsel if requested?

5. Do you anticipate any mergers, transfer of company ownership, sales management reorganizations, or departure of key personnel within the next three (3) years that might affect your ability to carry out your proposal if it results in a contract with the State of Delaware? If yes, please explain.

6. Is your Company affiliated with another company? If yes, please describe the relationship.

BUSINESS ASSOCIATE AGREEMENT

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

In the performance of services on behalf of the Plan pursuant to the Contract, and in order for Vendor to use, disclose or create certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below), Contractor is a Business Associate of the Plan as that term is defined by the Health Insurance Portability and Accountability Act of 1996, including the modifications required under the American Recovery and Reinvestment Act of 2009 (“ARRA”), and its implementing Administrative Simplification regulations (45 C.F.R. §§142, 160, 162 and 164) (“HIPAA”). Accordingly, Contractor, the Plan and Plan Sponsor mutually agree to modify the Contract to incorporate the terms of this BA Agreement to comply with the requirements of HIPAA, and to include additional provisions that Plan Sponsor, the Plan and Contractor desire to have as part of the Contract.

Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

I. DEFINITIONS

The following terms used in the Contract shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

A. Specific Definitions

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to the Contract, shall mean Vendor.
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to the Contract, shall mean the Plan.
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

II. PERMITTED USES AND DISCLOSURES BY VENDOR

- A. During the continuance of the Contract, Contractor will perform services necessary in connection with the Plan as outlined in the Contract. These services may include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined in 45 CFR §164.501. In connection with the services to be performed pursuant to the Contract, Contractor is permitted or required to use or disclose PHI it creates or receives for or from the Plan or to request PHI on the Plan's behalf as provided below.
- B. Functions and Activities on the Plan's Behalf.** Unless otherwise limited in this BA Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Plan as specified in the Contract. Contractor may decide in its own reasonable discretion what uses and disclosures of PHI are required for it to perform administrative services for the Plan as outlined in this BA Agreement and in the Contract as well as in accordance with the law.
1. Use for Contractor's Operations. Contractor may use PHI it creates or receives for or from the Plan for Contractor's proper management and administration or to carry out Contractor's legal responsibilities in connection with services to be provided under the Contract.
 2. Disclosures for Contractor's Operations. Contractor may disclose the minimum necessary of such PHI for Contractor's proper management and administration or to carry out Contractor's legal responsibilities, but only if the following conditions are met:
 - a. The disclosure is required by law; or
 - b. Contractor obtains reasonable assurance, evidenced by written contract, from any person or organization to which Contractor will disclose such PHI that the person or organization will:
 - i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person or organization or as required by law; and
 - ii) Promptly notify Contractor (who will in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
 3. Minimum Necessary Standard. In performing functions and activities in connection with the Contract, Contractor agrees to make reasonable efforts to use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.

C. Data Aggregation Services. The Plan agrees and recognizes that Contractor performs Data Aggregation services for the Plan, as defined by the HIPAA Rules. In the course of performing normal and customary services under the Contract, this data aggregation is an essential part of Contractor’s work on behalf of the Plan under the Contract. Accordingly, Contractor can perform these data aggregation services in its own discretion, subject to any limitations imposed by the Contract. The term “Data Aggregation” is defined under the HIPAA Rules to mean, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a covered entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

D. Prohibition on Unauthorized Use or Disclosure

1. Non-permitted Use and Disclosure of PHI. Contractor will neither use nor disclose PHI it creates or receives for or from the Plan or from another Business Associate of the Plan, except as permitted or required by the Contract and this BA Agreement, as required by law, as otherwise permitted in writing by the Plan, or as authorized by a Covered Person.
2. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the Contract and this BA Agreement, Contractor will disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Plan. Other than disclosures permitted by this Section II or as otherwise specifically identified in the Contract, Contractor will not disclose Covered Persons’ PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.
3. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons’ PHI to Plan Sponsor, except as permitted by and in accordance with Section VII or as otherwise specifically identified in the Contract.

III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR

- A. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
- B. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BA Agreement.
- C. Contractor agrees to report to Covered Entity, without unreasonable delay and in any event within thirty (30) days, any use or disclosure of the PHI not provided for by this BA

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Agreement or otherwise in writing by the Plan. Contractor shall maintain a written log recording the date, name of Covered Person and description of PHI for all such unauthorized use or disclosure and shall submit such log to the Plan Sponsor semiannually and by request. Contractor agrees to directly provide notice to any effected participants in the event of a Breach and to send a written log each such Breach and notice to participants to the Covered Entity within thirty (30) days of notification. Contractor agrees to notify participants in accordance with the guidelines and standards set forth by the Department of Health and Human Services under the American Reinvestment & Recovery Act and the HITECH Act. Upon termination of BA Agreement, the Vendor agrees to transfer all logs that contain the accounting of PHI Disclosure to the Plan or a designee.

- D. Contractor will require that any agent, including a subcontractor, to whom it provides PHI as permitted by this BA Agreement (or as otherwise permitted with the Plan's prior written approval), agrees to the same restrictions and conditions that apply through this BA Agreement to Contractor with respect to such information.
- E. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the HIPAA Rules.
- F. Contractor agrees to implement administrative, physical, and technical safeguards (as set forth in the Security Rule) that reasonably and appropriately protect the confidentiality and integrity (as set forth in the Security Rule), and the availability of Electronic PHI, if any, that Contractor creates, receives, maintains, or transmits electronically on behalf of Covered Entity. Contractor agrees to establish and maintain security measures sufficient to meet the safe harbor requirements established pursuant to ARRA by making data unreadable, indecipherable, and unusable upon receipt by an unauthorized person. Contractor agrees to provide adequate training to its staff concerning HIPAA and Contractors responsibilities under HIPAA.
- G. Contractor agrees to report to Covered Entity any Security Incident of which Contractor becomes aware.
- H. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such information.

IV. INDIVIDUAL RIGHTS OBLIGATIONS

- A. **Access.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will provide access to PHI as required by 45 CFR §164.524 on the Plan's behalf. Contractor will provide such access according to its own procedures for such access. Contractor represents that

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its procedures for such access comply with the requirements of 45 CFR §164.524. Such provision of access will not relieve the Plan of any additional and independent obligations to provide access where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any PHI about the Covered Person created or received for or from the Plan in Contractor's custody or control contained in a Designated Record Set, so that the Plan may meet its access obligations under 45 CFR §164.524. All fees related to this access, as determined by Contractor, shall be borne by Covered Persons seeking access to PHI.

- B. Amendment.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will amend PHI as required by 45 CFR §164.526 on the Plan's behalf. Contractor will amend such PHI according to its own procedures for such amendment. Contractor represents that its procedures for such amendment comply with the requirements of 45 CFR §164.526. Such amendment will not relieve the Plan of any additional and independent obligations to amend PHI where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will amend such PHI contained in a Designated Record Set, in accordance with the requirements of 45 CFR §164.526. Upon receipt of written or electronic notice from the Plan, Contractor will amend or permit the Plan access to amend any portion of the PHI created or received for or from the Plan in Contractor's custody or control, so that the Plan may meet its amendment obligations under 45 CFR §164.526.
- C. Disclosure Accounting.** So that the Plan may meet its disclosure accounting obligations under 45 CFR §164.528, Contractor and the Plan agree that, wherever feasible and to the extent that disclosures have been made by Contractor, Contractor will provide the accounting that is required under 45 CFR §164.528 on the Plan's behalf. Contractor will provide such accounting according to its own procedures for such accounting. Contractor represents that its procedures for such accounting comply with the requirements of 45 CFR §164.528. Such provision of disclosure accounting will not relieve the Plan of any additional and independent obligations to provide disclosure accounting where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will provide an accounting as set forth below.

1. Disclosure Tracking

Starting as of the Effective Date of the Contract, Contractor will record each disclosure of Covered Persons' PHI, which is not exempted from disclosure accounting that Contractor makes to the Plan or to a third party.

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The information about each disclosure that Contractor must record (“Disclosure Information”) is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Contractor made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Covered Persons’ PHI that Contractor makes for a single purpose to the same person or entity (including the Plan), Contractor may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. Exceptions from Disclosure Tracking

Contractor is not required to record disclosure information or otherwise account for disclosures of PHI that this BA Agreement or the Plan in writing permits or requires: (i) for the purpose of the Plan’s payment activities or health care operations, (ii) to the individual who is the subject of the PHI disclosed, or to that individual’s personal representative; (iii) to persons involved in that individual’s health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented; (x) for disclosures prior to April 14, 2003; or (xi) as otherwise excepted under 45 CFR §164.528.

3. Disclosure Tracking Time Periods

Contractor will have available for the Plan or for Covered Persons the Disclosure Information required for the six (6) years immediately preceding the date of the Plan’s request for the Disclosure Information (except Contractor will not be required to have Disclosure Information for disclosures occurring before April 14, 2003) or when it was last in effect, whichever is later.

D. Right to Request Restrictions and Confidential Communications

So that the Plan may meet its obligations to evaluate requests for restrictions and confidential communications in connection with the disclosure of PHI under 45 CFR §164.522, Contractor and the Plan agree that, wherever feasible and to the extent that communications are within the control of Contractor, Contractor will perform these evaluations on behalf of the Plan. Contractor will evaluate such requests according to its own procedures for such requests, and shall implement such appropriate operational steps as are required by its own procedures. Contractor represents that its procedures for evaluating such requests comply with the requirements of 45 CFR §164.522. Such evaluation will not relieve the Plan of any additional and independent obligations to evaluate restrictions or implement confidential communications where requested by an individual. Accordingly, upon the Plan’s written or electronic request or the direct request

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of a Covered Person or the Covered Person's Personal Representative, Contractor will evaluate requests for restrictions and requests for confidential communications, and will respond to these requests as appropriate under Contractor's procedures.

V. OBLIGATIONS OF THE COVERED ENTITY

- A. Covered Entity shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.
- B. Covered Entity shall notify Contractor of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- C. Covered Entity shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Covered Entity except as provided in this BA Agreement. In no event shall Covered Entity request Contractor to disclose to Covered Entity or agents of Covered Entity any PHI unless such disclosure is the minimum necessary disclosure that satisfies the request and that such disclosure is solely for the purpose of treatment, payment or plan operations.

VI. BREACH OF PRIVACY OBLIGATIONS

Without limiting the rights of the parties under the Contract, the Plan will have the right to terminate the Contract if Contractor has engaged in a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations regarding PHI under this BA Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation.

If Contractor fails to cure the material breach or end the violation after the Plan's notice, the Plan may terminate the Contract by providing Contractor written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective sixty (60) days from this termination notice.

A. Effect of Termination.

1. Return or Destruction upon Contract End

Upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will if feasible return to the Plan or destroy all PHI, in whatever form or medium (including in any electronic medium under Contractor's custody or control), that Contractor created or received for or from the Plan, including all copies of such PHI that allow identification of any Covered Person who is a subject of the PHI. Contractor will complete such return or destruction as promptly as practical after the

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effective date of the cancellation, termination, expiration or other conclusion of the Contract.

Following notice, Contractor shall pay the costs incurred in returning or destroying such PHI unless Plan Sponsor agrees to reimburse Contractor for reasonable costs following good faith negotiation between Contractor and Plan Sponsor subject to the requisite appropriation by the Delaware General Assembly as required by 29 *Del. C.* §§ 65 and Article 8, Section III of the Delaware Constitution.

2. Disposition When Return or Destruction Not Feasible

The Plan recognizes that in many situations, particularly those involving data aggregation services performed by Contractor for the Plan and others, that it will be infeasible for Contractor to return or destroy PHI. Accordingly, where in Contractor's discretion such return or destruction is infeasible, for any such PHI, upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will limit its further use or disclosure of the PHI to those purposes that make their return to the Plan or destruction infeasible.

VII. PLAN SPONSOR'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS

- A. **Communication of PHI.** Except as specifically agreed upon by Contractor, the Plan and Plan Sponsor, and in compliance with any requirements imposed by this Section VII, all disclosures of PHI from Contractor pursuant to the Contract shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.
- B. **Summary Health Information.** Upon Plan Sponsor's written request for the purpose either to, (a) obtain premium proposals for providing health insurance coverage for the Plan, or (b) modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.
- C. **Plan Sponsor Representation.** Plan Sponsor represents and warrants (A) that the Plan has been established and is maintained pursuant to law, (B) that the Plan provides for the allocation and delegation of responsibilities for the Plan, including the responsibilities assigned to Contractor under the Contract, (C) that the Plan includes or incorporates by reference the appropriate terms of the Contract and this BA Agreement, and (D) that the Plan incorporates the provisions required by 45 CFR §164.504.
- D. **Plan Sponsor's Certification.** Contractor will not disclose Covered Persons' PHI to Plan Sponsor, unless and until the Plan authorizes Contractor in writing to disclose the minimum necessary Covered Persons' PHI to Plan Sponsor for the plan administration functions to be performed by Plan Sponsor as specified in the Plan.
- E. **Contractor Reliance.** Contractor may rely on Plan Sponsor's certification and the Plan's written authorization, and will have no obligation to verify that the Plan complies with the

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requirements of 45 CFR §164.504 or this BA Agreement or that Plan Sponsor is complying with the Plan.

- F. The Plan Amendment.** Before the Plan will furnish Plan Sponsor's certification described above to Contractor, the Plan will ensure (1) that its Plan establishes the uses and disclosures of Covered Persons' PHI consistent with the requirements of 45 CFR §164 that Plan Sponsor will be permitted and required to make for the plan administration functions Plan Sponsor will perform for the Plan, and (2) that Plan Sponsor agrees to all the applicable conditions imposed by §164.504 on the use or disclosure of PHI.

VIII. MISCELLANEOUS

- A. Regulatory References.** A reference in this BA Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- B. Survival.** The respective rights and obligations of Contractor under Section IV of this BA Agreement shall survive the termination of this BA Agreement.
- C. Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. Except to the extent specified by this BA Agreement, all of the terms and conditions of the Contract shall be and remain in full force and effect. In the event of any inconsistency or conflict between this BA Agreement and the Contract, the terms and provisions and conditions of this BA Agreement shall govern and control. Nothing express or implied in this BA Agreement and/or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. This BA Agreement shall be governed by and construed in accordance with the same internal laws that are applicable to the Contract.
- D. Duration.** This BA Agreement will continue in full force and effect for as long as the Contract remains in full force and effect. This BA Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the Contract.
- E. Term.** The Term of this BA Agreement shall be effective as of the date appearing on the signature page, and shall terminate when all of the PHI provided by Covered Entity to Vendor, or created or received by Vendor on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this BA Agreement.
- F. Amendment.** Upon the effective date of any final regulation or amendment to final regulations with respect to the HIPAA Rules, this BA Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Vendor remain in compliance with such regulations, unless (1) Contractor elects to terminate the Contract by providing Plan Sponsor and the Plan notice of termination in accordance with the Contract

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at least thirty (30) days before the effective date of such final regulation or amendment to final regulations; or (2) Vendor notifies the Plan of its objections to any such amendment. In the event of such an objection, the parties will negotiate in good faith in connection with such changes or amendment to the relevant final regulation.

- G. Conflicts.** The provisions of this BA Agreement will override and control any conflicting provision of the Contract. All nonconflicting provisions of the Contract will remain in full force and effect.
- H. Independent Relationship.** None of the provisions of this BA Agreement are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent parties solely for the purposes of effecting the provisions of this BA Agreement and the Contract.
- I. Rights of Third Parties.** This BA Agreement is between Vendor and the Plan and the Plan Sponsor and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- J. Notices.** All notices and notifications under this BA Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Vendor, the Plan and Plan Sponsor at the addresses indicated on the signature page hereof, or such other address as a party may indicate by at least ten (10) days' prior written notice to the other parties. Notices will be effective upon receipt.
- K. Expenses.** Unless otherwise stated in this BA Agreement or the Contract, each party shall bear its own costs and expenses related to compliance with the above provisions. Any additional expenses incurred by Vendor in connection with services to be provided pursuant to this BA Agreement shall be included in the Contract.
- L. Documentation.** All documentation that is required by this BA Agreement or by the HIPAA Rules must be retained by Vendor for six (6) years from the date of creation or when it was last in effect, whichever is longer.

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AGREED By and between the undersigned Parties this ___ day of _____ 20__.

STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES

VENDOR

Signature
Faith L. Rentz
Director,
Statewide Benefits and Insurance Coverage

Signature
Printed Name: _____
Title:

Date

Date

FEE QUOTE

See separate document in Excel

Contract No. DHR24005-FSA_COBRA

Contract Title: Flexible Spending Account Program, Pre-Tax Commuter Program and COBRA Administration

PERFORMANCE GUARANTEES

Instructions: The State of Delaware requires interested vendors to agree to place a percentage of premium/fees per contract year at risk for performance guarantees. If you propose alternative guarantees, performance results, or definitions, please use a strikeout font and insertion. **You are encouraged to provide additional fees at risk; vendors that do so will be viewed favorably by the State.** The State of Delaware reserves the right to negotiate both financial and non-financial performance guarantees with the selected vendor.

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

Minimum Total Fees at Risk:

- a. **Implementation – 30.0% for all programs (FSA, PTC, COBRA)**
- b. **Yearly – 5.0% for all programs (FSA, PTC, COBRA), plus
7.0% for FSA/PTC program administration effective 7/1/25
3.0% for COBRA administration effective 7/1/25**

Implementation – Minimum of 30.0% of fees at risk for all programs (FSA, PTC, and COBRA)

Performance Guarantee	Standard	Fee at Risk
Future Contract Development	The vendor is expected to take their template contract form, or use the State’s professional agreement contract template, and incorporate all the terms of the RFP, their bid responses and follow-up responses by the second draft so that wholesale changes are not required.	5.0%
Implementation and Account Manager Performance	Implementation manager, account executive / manager and claim manager will participate in every implementation call and will be prepared to lead the calls, based on detailed agenda sent to team in advance.	7.5%
Maintenance of Detailed Project Plan	Project plan must delineate due dates, responsible parties and critical linkages between tasks, as appropriate. Project plan will be updated and distributed in advance of each implementation weekly call.	5.0%

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Performance Guarantee	Standard	Fee at Risk
Adherence to Key Deadlines	<p>All key dates will be met to the extent Vendor has control and/or has notified State of risks of failure in advance of due date. State and Vendor will agree at the beginning of implementation on which deadlines are critical to program success.</p> <p>Success of implementation will be rated by key stakeholders of the employer at the conclusion of implementation. The following categories will be included:</p> <ul style="list-style-type: none"> - Employer training - System set up (including claims system, employer portal, feeds, and interfaces) - Satisfactory results of implementation readiness assessment (if applicable) 	7.5%
Open Enrollment Support	All administrative functions completed for a successful Open Enrollment. Customer Service representatives will be trained on any plan changes prior to the commencement of Open Enrollment and will provide accurate information during Open Enrollment.	5.0%
Total		30.0%

All Programs: FSA, PTC and COBRA (ongoing administration) – Minimum of 5.0% of fees at risk for all programs

Performance Guarantee	Standard	Fee at Risk
Customer Service Call Response Times	≤ 30 seconds	1.0%
Call Abandonment Rate	≤ 5%	1.0%
Resolution of Participant Inquiries	90% ≤ 1 business day after date case is opened by Vendor	0.5%
Resolution of Participant Inquiries	98% ≤ 5 business days after date case is opened by Vendor	0.5%
Client Satisfaction Survey (semi-annual metric)	An average rating of “3” or higher based on semi-annual survey	2.0%
Total		5.0%

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FSA/PTC Programs (ongoing administration) – Minimum of 10.0% of fees at risk, in addition to fees at risk for All Programs: FSA, PTC and COBRA (ongoing administration), above

Performance Guarantee	Standard	Fee at Risk
Communication to members (during open enrollment)	"Welcome mailing" to include e-location of SPD and distribution of Debit Card within 3 weeks from open enrollment closing; status of unsubstantiated documentation required from Debit Card holders to submit claims by end of grace period.	1.0%
Claims processing time	95% of all claims processed within two business days of receipt and 99% of all claims processed within three business days of receipt.	0.75%
Claims accuracy	99% of all claims will be processed correctly.	0.75%
Information processing / reporting	95% of all reports will be provided to the State on time and accurate as indicated on master reports list. Quarterly statements on routine basis. (Refer to Attachments 18a and 18b.)	1.0%
Website availability	Vendor's website will be available at least 99% of the time for employees to enroll and review status of account during open enrollment and throughout the plan year. The State of DE will be notified of unexpected site problems or outages within 24 hours or sooner and will receive notice of site maintenance, site problems, system replacements, etc. with not less than 7 business days' notice. No later than 3 business days prior to start of Open Enrollment, website changes will be complete, tested and verified as accurate by client. From 6am to 10pm EST during Open Enrollment, website must be 99% available with all components related to OE fully operational. <i>Failure to meet website requirements during OE will not be subject to average quarterly criteria and will result in automatic application of full penalty.</i>	2.0%
Account management meetings and participation in member meetings	Quarterly Meetings (one quarterly meeting will be in person and three quarterly meetings will be by conference call). Conference Calls, SEBC Meetings, and <i>Ad Hoc</i> Meetings as requested by SBO.	0.5%
Open enrollment files	1. Test eligibility file (PHRST ¹ to Vendor) - processed in 1 business day.	0.5%
	2. Enrollment file (Vendor to PHRST) - within 5 business days at end of open enrollment.	

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Performance Guarantee	Standard	Fee at Risk
	3. Final enrollment file (PHRST to Vendor) - processed in 1 business day.	
Nondiscrimination testing	1. Mid-year - PHRST to Vendor mid to late June - Vendor to process within 5 business days of receipt.	0.5%
	2. End of year - PHRST to Vendor after confirm of last check - Vendor to process within 5 business days.	
	3. Beginning of plan year - PHRST to Vendor after confirm of last check - Vendor to process within 5 business days.	
Total		7.0%

COBRA (ongoing administration) – Minimum of 3.0% of fees at risk, in addition to fees at risk for All Programs: FSA, PTC and COBRA (ongoing administration), above

Performance Guarantee	Standard	Fee at Risk
Client Premium Statement and Fee Invoice	98% distributed ≤ 7 business days after the 1 st of the month	0.75%
Payment Posting Timeliness	98% posted by Vendor ≤ 3 business days after date received by	0.75%
Inbound File Processing Timeliness	98% ≤ 2 business days after date received by Vendor	0.75%
Open Enrollment Support	<p>All administrative functions will be completed for a successful Open Enrollment (OE). Functions include making accessible the ASI online portal for eligible qualified beneficiaries (QB) during the open enrollment period, updating plan rates in the ASI online portal and any applicable communications to members, drafting and/or updating the ASI online portal guide for QBs, drafting, updating and/or mailing OE communications if requested, and providing lists of eligible QBs that may be used for mailing purposes.</p> <p>Vendor will train its Customer Service Representatives on any plan changes prior to the commencement of Open Enrollment. Vendor’s website will be available at least 99% of the time for employees to enroll and review status of account during open enrollment and throughout the plan year.</p>	0.75%

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Total	3.0%
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¹PHRST is the State's PeopleSoft Oracle-based payroll system.

Master Report List

A. FSA/PTC

FSA or Pre Tax Commuter	File Description	Frequency	Target Date
FSA	Year-to-Date Status Report (Summarizes by member all year-to-date participant activity for Health Care and Dependent Care FSA. Separate reports are provided for 22 and 26 pay period people).	Monthly	2 business days following end of prior month
FSA and Pre-Tax Commuter	Discrepancy Report (Comparison between actual employee contribution data for FSA and PTC programs with the expected deductions.)	Biweekly	2 business days following end of pay period
FSA	Weekly Listing of Payments (Summarizes claims payment activity.) Separate reports for 22 and 26 pay period members for FSA.	Weekly	2 business days following payroll issue date
Pre Tax Commuter	Weekly Listing of Payments (Summarizes claims payment activity.)	Weekly	2 business days following end of prior week
FSA (Debit Card holders)	Unsubstantiated Report (Provides details on active unsubstantiated claims.)	Monthly	2 business days following end of prior month
FSA (Debit Card holders)	Annual Unsubstantiated Report (Provides final details on active unsubstantiated claims.)	Yearly	On November 1 following the October 15 deadline
FSA (Debit Card holders)	Card Totals Report (List of people whose Debit Card has been suspended).	Monthly	2 business days following end of prior month
Pre Tax Commuter	Pre Tax Commuter File (Created to tell the State's PeopleSoft based payroll system, "PHRST", what deductions to take.)	Biweekly	Thursday the week prior to pay check issue date
Pre Tax Commuter	No Activity Report (List of terminated or current employees with accounts with no activity for nine months.)	Monthly	2 business days following end of prior month

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FSA or Pre Tax Commuter	File Description	Frequency	Target Date
Pre Tax Commuter	Forfeiture Report (List of participants who have had no activity for twelve months and the amount that may be forfeited back to the plan.)	Monthly	2 business days following end of prior month
FSA and Pre-Tax Commuter	Standards for Attestation Engagements Audit Report (includes SOC 1 and SOC 2)	Yearly	By July 1st

B. COBRA

COBRA Reports	File Description	Frequency	Target Date
Participant Enrollments	Generated Letters Summary Report – contains a summary of members issued enrollment confirmation notices within a specific date range	As Needed	As Needed
Carrier Notifications Processed	Carrier Notifications Processed Report – details items which are reported to the carrier overnight	As Needed	As Needed
Participant Status	Member Status Report - contains a summary of all members records in the system that have a status of pending, enrolled, or terminated as of a certain date.	As Needed	As Needed
Termination of COBRA	Generated Letters Summary Report – contains a summary of members issued COBRA termination notices within a specific date range	As Needed	As Needed
Qualified Beneficiary Plan Members for University of Delaware (UD)	Qualified Beneficiary Plan Members Report – contains a listing of University of Delaware members under each insurance plan	Biweekly	Biweekly
Proof of Compliance with federal COBRA and	Proof of Mail Report - contains a listing of all letters that are required to be processed on a specific date. The report serves the State as proof of compliance that COBRA	Quarterly	15 days after the end of each quarter

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Department of Human Resources

COBRA Reports	File Description	Frequency	Target Date
HIPAA Regulations	notices, which may include information on rates and changes to rates, are being sent to plan participants and qualified beneficiaries within the timelines specified by the COBRA and HIPAA regulations.		
Online Portal User Access List	List of users with access to the ASI COBRA Employer Portal	Quarterly	By the Quarterly Meeting
Direct Bill Detail for ACA/ Qualified Beneficiary Detail for ACA Report	Direct Bill Detail for ACA/ Qualified Beneficiary Detail for ACA Report – contains information necessary for employers to meet obligations under the Employer Reporting Mandate component of the Affordable Care Act (ACA)	Annually	January 1st
COBRA Administrative Fee and Remittance Invoices	COBRA Fee and Remittance Invoices – contains fees to be paid by the State of Delaware on a monthly basis. This includes fees associated with COBRA initial notices, qualifying event notifications, ongoing COBRA administration, and ongoing direct bill participant administration.	Monthly	By the 11 th of the following month
New Hire Report	NPM Report – contains a listing of all new hires whose general rights letters were generated within a specific date range. The report supports the review and confirmation of fees outlined in the COBRA Fee and Remittance Invoices.	Monthly	By the 10 th of the following month
Qualified Beneficiary Summary	Qualified Beneficiary Summary Report – contains a listing of all qualified beneficiary records in the system grouped by status. The report supports the review and confirmation of fees outlined in the COBRA Fee and Remittance Invoices.	Monthly	By the 10 th of the following month

STATE OF DELAWARE
Department of Human Resources

COBRA Reports	File Description	Frequency	Target Date
Remittance Report	<p>Remittance Report – contains a detailed summary of all payments applied to premium months that are due either to the employer or carrier through a specific date. The report supports the review and confirmation of fees outlined in the COBRA Fee and Remittance Invoices.</p>	Monthly	By the 10 th of the following month

Account Management Survey - FSA/PTC

Account Management Team Survey

FSA PTC

STATE OF DELAWARE
Department of Human Resources

For Reporting Period:

Completed by: SBO Vendor Management Team

The Vendor Management Team of the Statewide Benefits Office is using this tool to evaluate the Account Management Team of _____ in serving as a provider of Flexible Spending Account (FSA) and Pre-Tax Commuter Benefit Programs (CBP) for the State of Delaware.

Knowledge: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree	4	3	2	Strongly Disagree	For any "1" or "2" responses, please provide specific comments in the area below
	5				1	
1. Understands your benefits plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Understands your business needs. Meets with you to establish needs and service expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Understands your service expectations. Develops a business plan that incorporates the agreed upon needs and expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Displays knowledge regarding flexible spending account(s) and pre tax commuter benefit products and services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Clearly explains your report results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
					Average Rating	_____

STATE OF DELAWARE
Department of Human Resources

Professionalism: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree	4	3	2	Strongly Disagree	
	5				1	For any "1" or "2" responses, please provide specific comments in the area below
6. Actively listens to and acknowledges your issues and concerns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Provides appropriate verbal communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Provides appropriate written communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Works with you to develop a positive working relationship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						

Proactive Management: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree	4	3	2	Strongly Disagree	
	5				1	For any "1" or "2" responses, please provide specific comments in the area below
10. Actively monitors your account and interacts with you in a frequency that meets your needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Communicates potential problems/issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Provides viable alternative solutions that meet your business needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Manages and understands system requirements and their effect on your business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Sets realistic expectations regarding turn-around time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						

STATE OF DELAWARE
Department of Human Resources

Accessibility: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	
15. Available to you on a timely basis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	For any "1" or "2" responses, please provide specific comments in the area below
16. Allocates appropriate time when meeting with you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17. Demonstrates flexibility with regard to schedule changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Provides/communicates alternate contacts in the event of their absence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19. Advises you of schedule limitations upon contact for meetings, conference calls, projects etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						_____

Responsiveness: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	
20. Responds to your inquiries in a timely manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	For any "1" or "2" responses, please provide specific comments in the area below
21. Provides thorough responses to your inquiries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22. Follows-through regarding outstanding problems/issues/items	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
23. Solicits the assistance of product experts when needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						_____
Overall Average Rating						_____

STATE OF DELAWARE
Department of Human Resources

Please include any other comments or suggested action steps:

Account Management Survey - COBRA

Account Management Team Survey

COBRA

STATE OF DELAWARE
Department of Human Resources

For Reporting Period:

Completed by: SBO Vendor Management Team

The Vendor Management Team of the Statewide Benefits Office is using this tool to evaluate the Account Management Team of _____ in serving as a provider of COBRA Administration for the State of Delaware.

Knowledge: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
1. Understands your benefits plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Understands your business needs. Meets with you to establish needs and service expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Understands your service expectations. Develops a business plan that incorporates the agreed upon needs and expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Displays knowledge regarding COBRA benefit products and services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Clearly explains your report results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

Average Rating _____

STATE OF DELAWARE
Department of Human Resources

Professionalism: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree	4	3	2	Strongly Disagree	
	5				1	For any "1" or "2" responses, please provide specific comments in the area below
6. Actively listens to and acknowledges your issues and concerns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Provides appropriate verbal communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Provides appropriate written communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Works with you to develop a positive working relationship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						

Proactive Management: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree	4	3	2	Strongly Disagree	
	5				1	For any "1" or "2" responses, please provide specific comments in the area below
10. Actively monitors your account and interacts with you in a frequency that meets your needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Communicates potential problems/issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Provides viable alternative solutions that meet your business needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Manages and understands system requirements and their effect on your business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Sets realistic expectations regarding turn-around time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						

STATE OF DELAWARE
Department of Human Resources

Accessibility: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	
15. Available to you on a timely basis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	For any "1" or "2" responses, please provide specific comments in the area below
16. Allocates appropriate time when meeting with you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17. Demonstrates flexibility with regard to schedule changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Provides/communicates alternate contacts in the event of their absence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19. Advises you of schedule limitations upon contact for meetings, conference calls, projects etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Average Rating _____

Responsiveness: Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	
20. Responds to your inquiries in a timely manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	For any "1" or "2" responses, please provide specific comments in the area below
21. Provides thorough responses to your inquiries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22. Follows-through regarding outstanding problems/issues/items	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
23. Solicits the assistance of product experts when needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Average Rating _____

Overall Average Rating _____

STATE OF DELAWARE
Department of Human Resources

Please include any other comments or suggested action steps:

PTC Payroll Deduction Coverage Schedule

Deduction Coverage Schedule

Pre-Tax Commuter Elections

If Election Date is...	Deductions will be Taken...	For Benefit Coverage in...
November 16 to December 15	Mass Transit participants, first paycheck in January All other participants, first two paychecks in January	February
December 16 to January 15	Mass Transit participants, first paycheck in February All other participants, first two paychecks in February	March
January 16 to February 15	Mass Transit participants, first paycheck in March All other participants, first two paychecks in March	April
February 16 to March 15	Mass Transit participants, first paycheck in April All other participants, first two paychecks in April	May
March 16 to April 15	Mass Transit participants, first paycheck in May All other participants, first two paychecks in May	June
April 16 to May 15	Mass Transit participants, first paycheck in June All other participants, first two paychecks in June	July
May 16 to June 15	Mass Transit participants, first paycheck in July All other participants, first two paychecks in July	August
June 16 to July 15	Mass Transit participants, first paycheck in August All other participants, first two paychecks in August	September
July 16 to August 15	Mass Transit participants, first paycheck in September All other participants, first two paychecks in September	October
August 16 to September 15	Mass Transit participants, first paycheck in October All other participants, first two paychecks in October	November
September 16 to October 15	Mass Transit participants, first paycheck in November All other participants, first two paychecks in November	December
October 16 to November 15	Mass Transit participants, first paycheck in December All other participants, first two paychecks in December	January

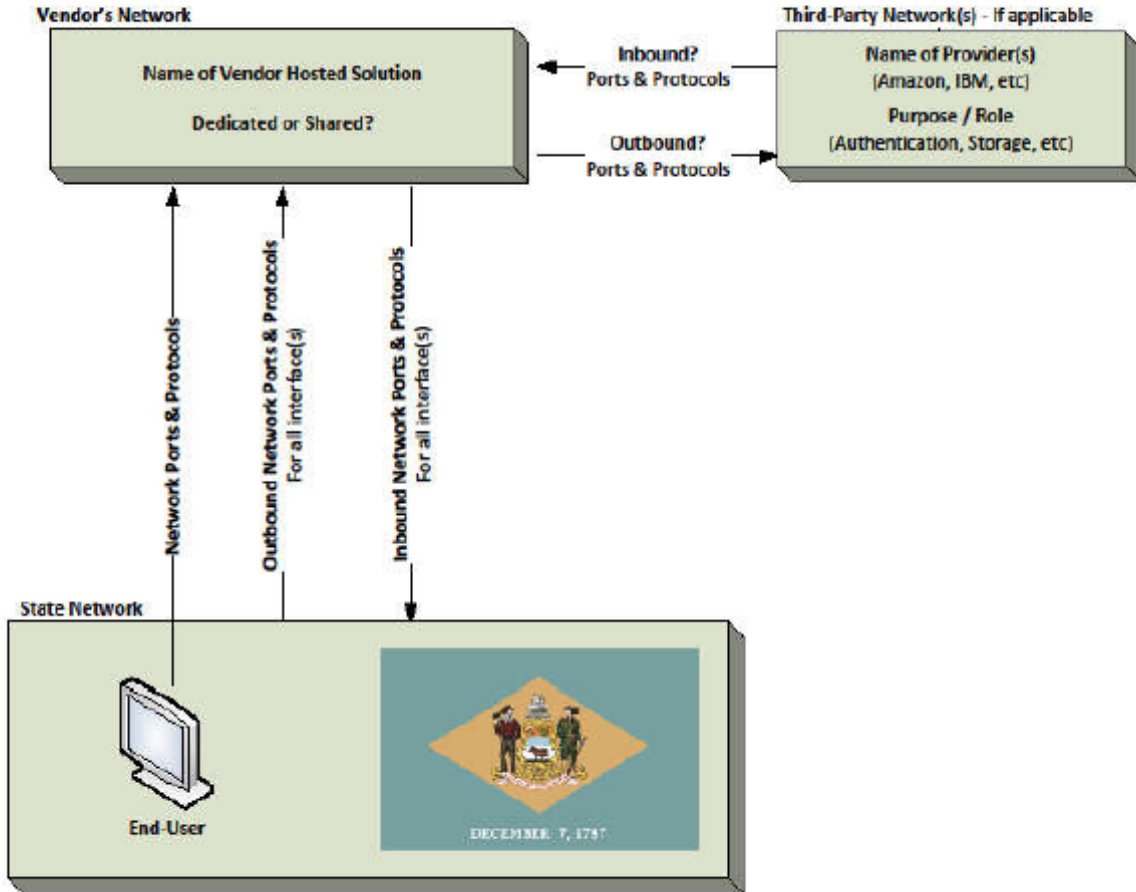
Attachment 20 - Data File Descriptions and Layouts

- Confidential, NDA required
- Released in ProposalTech

Attachment 21

- Attachment 21 - COBRA Transaction Volumes
 - Confidential, NDA required
 - Released in ProposalTech

**Network Diagram Template
For Hosted / Outsourced Solutions**





PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE
State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # _____, Appendix _____
between State of Delaware and _____ dated _____

This document shall become part of the final contract.

	Public Data	Non Public Data	
1	✓	✓	Data Ownership: The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.
2	✓	✓	Data Usage: The PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State’s Terms and Conditions Governing Cloud Services and Data Usage Policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information. No party related to the PROVIDER or contracted by the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware.
3	✓	✓	Termination and Suspension of Service: In the event of termination of the contract, PROVIDER shall implement an orderly return of State of Delaware data in CSV, XML, or another mutually agreeable format. The PROVIDER shall guarantee the subsequent secure disposal of State of Delaware data. a) Suspension of services: During any period of suspension, contract negotiation, or disputes, the PROVIDER shall not take any action to intentionally erase any State of Delaware data. b) Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally erase any State of Delaware data for a period of ninety (90) days after the effective date of the termination. All obligations for protection of State data remain in place and enforceable during this 90-day period. After such 90-day period has expired, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally or contractually prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession. Within this 90-day timeframe, the PROVIDER will continue to secure and back up State of Delaware data covered under the contract. c) Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement. d) Secure Data Disposal: When non-public data is provided by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods after ninety (90) days of the contract termination. The PROVIDER shall provide written certificates of destruction to the State of Delaware.

Form Revision Date: 8/21/23

STATE OF DELAWARE
Department of Human Resources



PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE
State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # _____, Appendix _____
between State of Delaware and _____ dated _____

This document shall become part of the final contract.

	Public Data	Non Public Data	
4		✓	Data Location: The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.
5		✓	Encryption: The PROVIDER shall encrypt all non-public data in transit regardless of the transit mechanism. For engagements where the PROVIDER stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest . The PROVIDER's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2 , Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the 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 Terms and Conditions Governing Cloud Services and Data Usage Policy .
6		✓	Breach Notification and Recovery: The PROVIDER must notify the State of Delaware at eSecurity@delaware.gov immediately or within 24 hours of any determination of the breach of security as defined in 6 Del. C. §12B-101(2) resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. The PROVIDER shall send 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. The PROVIDER will continue to send any and all reports subsequent to the preliminary written report. The PROVIDER shall meet and confer with representatives of DTI regarding required remedial action in relation to any such data breach without unreasonable delay. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's Terms and Conditions Governing Cloud Services and Data Usage Policy) by PROVIDER or its subcontractors. The PROVIDER will assist and be responsible for all costs to provide notification to persons whose information was breached without unreasonable delay but not later than sixty (60) days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; or 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State will retain all determining authority for breach accountability and responsibility. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless. The PROVIDER shall not issue a media notice without the approval of the State.
7		✓	Background Checks: The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a federally compliant (IRS Pub 1075 2.C.3) criminal background check. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract,

Form Revision Date: 8/21/23

STATE OF DELAWARE
Department of Human Resources



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

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # _____, Appendix _____

between State of Delaware and _____ dated _____

This document shall become part of the final contract.

	Public Data	Non Public Data																						
			have no convictions, pending criminal charges, or civil suits related to any crimes of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the PROVIDER's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.																					
8		✓	Security Logs and Reports: The 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.																					
9		✓	Sub-contractor Flowdown: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.																					
10		✓	Contract Audit: The PROVIDER shall allow the State of Delaware to audit conformance including contract terms, system security, and data centers, as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least thirty (30) days advance written notice and shall not unreasonably interfere with the PROVIDER's business. In lieu of performing its own audit, the State may request the results of a third party audit from the PROVIDER or an attestation of compliance.																					
11		✓	<p>Cyber Liability Insurance: An awarded vendor unable to meet the Terms and Conditions Governing Cloud Services and Data Usage Policy requirement of encrypting PII at rest shall, prior to execution of a contract, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded vendor shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s). 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. Should the actual number of PII records exceed the anticipated number, it is the vendor's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that vendor fails to obtain sufficient coverage, vendor shall be liable to cover damages up to the required coverage amount.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Level</th> <th style="width: 40%;">Number of PII records</th> <th style="width: 50%;">Level of cyber liability insurance required (occurrence = data breach)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1-10,000</td> <td>\$2,000,000 per occurrence</td> </tr> <tr> <td>2</td> <td>10,001 – 50,000</td> <td>\$3,000,000 per occurrence</td> </tr> <tr> <td>3</td> <td>50,001 – 100,000</td> <td>\$4,000,000 per occurrence</td> </tr> <tr> <td>4</td> <td>100,001 – 500,000</td> <td>\$15,000,000 per occurrence</td> </tr> <tr> <td>5</td> <td>500,001 – 1,000,000</td> <td>\$30,000,000 per occurrence</td> </tr> <tr> <td>6</td> <td>1,000,001 – 10,000,000</td> <td>\$100,000,000 per occurrence</td> </tr> </tbody> </table>	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
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																						

Form Revision Date: 8/21/23

STATE OF DELAWARE
Department of Human Resources



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

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # _____, Appendix _____

between State of Delaware and _____ dated _____

This document shall become part of the final contract.

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

- FOR OFFICIAL **1-3 (Public Data)**
USE ONLY **1-11 (Non-Public Data)**

Provider Name/Address (print): _____

Provider Authorizing Official Name (print): _____

Provider Authorizing Official Signature: _____

Date: _____

Attachment 24

Cyber Responsibilities, Liability and Insurance

A. Vendor Protection of Customer Data

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

B. Definitions

Data Breach

1. In general the term “data breach” means a compromise of the security, confidentiality, or integrity of, or the loss of, computerized data for the State of Delaware that results in, or there is a reasonable basis to conclude has resulted in :
 - 1.1 The unauthorized acquisition of personally identifiable information (PII); or
 - 1.2 Access to PII that is for an unauthorized purpose, or in excess of authorization,
2. Exclusion
 - 2.1 The term “data breach” does not include any investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

Personally Identifiable Information (PII)

1. Information or data, alone or in combination that identifies or authenticates a particular individual.
 - 1.1 Such information or data may include, without limitation, Name, Date of birth, Full address (e.g. house number, city, state, and/or zip code), Phone Number, Passwords, PINs, Federal or state tax information, Biometric data, Unique identification numbers (e.g. driver's license number, social security number, credit or debit account numbers, medical records numbers), Criminal history, Citizenship status, Medical information, Financial Information, Usernames, Answers to security questions or other personal identifiers.
2. Information or data that meets the definition ascribed to the term “Personal Information” under §6809(4) of the Gramm-Leach-Bliley Act or other applicable law of the State of Delaware.

Customer Data

STATE OF DELAWARE
Department of Human Resources

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

Security Incident

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

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

1. Vendor shall notify State of Delaware, Department of Technology and Information (DTI) and State Benefits Office (SBO) without unreasonable delay when the vendor confirms a data breach. Such notification is to include the nature of the breach, the number of records potentially affected, and the specific data potentially affected.
 - 1.1 Should the State of Delaware or the awarded vendor determine that a data breach has actually occurred; the awarded vendor will immediately take all reasonable and necessary means to mitigate any injury or damage which may arise out of the data breach and shall implement corrective action as determined appropriate by VENDOR, DTI, and SBO.
 - 1.2 Should any corrective action resultant from Section B.1.1. above include restricted, altered, or severed access to electronic data; final approval of the corrective action shall reside with DTI.
 - 1.3 In the event of an emergency the awarded vendor may take reasonable corrective action to address the emergency. In such instances the corrective action will not be considered final until approved by DTI.
 - 1.4 For any record confirmed to have been breached whether such breach was discovered by the awarded vendor, the State, or any other entity and notwithstanding the definition of personally identifiable information as set forth at 6 *Del. C.* § 12B-101 the awarded vendor shall:
 - 1.4.1 Notify in a form acceptable to the State, any 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 SBO 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

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services, mailing costs, website, and toll free telephone call center services.

D. No Limitation of Liability for Certain Data Breaches

1. Covered Data Loss

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

2. Covered Disclosure

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

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

E. Cyber Liability Insurance

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

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

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F. Compliance

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

G. Media Notice

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

H. Points of Contact – Data Breach

1. State of Delaware

Department of Technology and Information
Solomon Adote, Chief Security Officer
Solomon.adote@delaware.gov ; 302.739.9631

Statewide Benefits Office
Pamela Barr, RFP and Contract Manager
Pamela.barr@delaware.gov

Attachment 25

RESPONSES TO SCOPE OF SERVICES QUESTIONNAIRE

Instructions:

!!! IMPORTANT !!!

A. Responsiveness –

- Generic responses or stock answers that do not address State-specific requirements will be deemed unresponsive.
- “Will discuss” and “will consider” are not appropriate answers.
- All questions are important to the State and therefore you may not answer that a topic is not applicable unless you specifically state why it is a service that does not apply for the plans or programs you are proposing.

B. Respond to Each Question –

- If a question is repeated in multiple sections and your answer is the same, do not refer to your answer in another section but copy it under each question.
- DO NOT LEAVE A RESPONSE BLANK! You must acknowledge that you feel the item does not apply and provide a reason why! Otherwise, we will need to ask you to reply in a follow-up question.

C. Fees or Costs – Fees or costs that are not included in your proposal and stated on the appropriate appendices (forms) will not be considered by the State. A fee only stated in a response to a question, whether or not we remind you to include a fee on the appropriate appendix or form, will not be considered! You must document ALL fees and costs in Attachment 15, Fee Quote.

D. Numbering – Please do not change the numbering of a question, even if there is an error in the sequence or a duplication.

A. Bidder Profile – All Services (FSA, PTC, and COBRA)

1. Please provide a brief history of your company. Include a summary of your status with respect to any past (within the last five (5) years), current, or prospective mergers and acquisitions and/or organizational restructuring.

For current mergers, acquisitions or reorganization planned for your organization, please include:

- a. The process and timing to complete that integration or reorganization.
 - b. Confirm if projected events are reflected in your proposal.
 - c. Confirm if and how would the State of Delaware be impacted by such events.
2. Describe the ownership of your company.
 3. If you have a parent company, how do you fit into its organization?
 4. Does your company have any plans for organizational restructuring in the next two years?
 5. Summarize any legal actions taken against your company in the past three years, including number of suits, causes of action, and amount of any monetary settlement or judgment.
 6. How would you handle State Holidays and emergency closings for the State of Delaware offices/banks in terms of payment by State or to members? Confirm your willingness to deviate from the typical timeframe for payments which may be impacted by holidays, emergency closings, fiscal year start-up, or unforeseen circumstances.
 7. What, if any, restrictions would apply to State data that would be made available to the State or its authorized agents for purpose of an audit?
 8. State if your company currently provides any services, directly or indirectly, to any of the following vendors. If so, provide a full description of services provided and whether or not you feel believe they represent a conflict of interest or potential conflict of interest.
 - a. Highmark Delaware (Blue Cross Blue Shield of Delaware)
 - b. Aetna
 - c. CVS Health
 - d. Dominion National (dental benefits)
 - e. Delta Dental
 - f. EyeMed Vision Care

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g. Merative

9. How many public sector clients do you serve in total?
10. Please confirm the percent of your book of business (by number of covered lives) that the State of Delaware would represent for the following programs:
 - a. FSA:
 - b. PTC:
 - c. COBRA:
11. Why should the State of Delaware procure FSA, PTC and COBRA administrative services through your company? What sets your company apart from others offering similar services?
12. Do you offer other optional, value-added services that support FSA, PTC, and/or COBRA administration? If so, please describe these services and the associated costs (and add these optional fees to your response to Attachment 15, Fee Quote). Please note any services/products you offer in support of annual open enrollment activities.

B. Account Management – All Services (FSA, PTC and COBRA)

1. Please provide the contact name, title, phone number, email, and brief biography for the following positions who will be assigned to the State of Delaware's account. If available, please provide a resume as an exhibit. Specify whether any of the following account team members would only support one or two programs and not all three benefits.

Position Title	Contact Name	Title	Phone number	Email Address	2023 Client Load	Percent of Time Dedicated to the State of Delaware
Executive Sponsor						
Account Executive						
Account Manager						
Implementation Manager						
Eligibility/Enrollment						

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Position Title	Contact Name	Title	Phone number	Email Address	2023 Client Load	Percent of Time Dedicated to the State of Delaware
Claims Supervisor						
Member Services Supervisor						
Operations Manager						
Other Important Roles						

2. For the account contacts below, if not already provided in the references section, please provide the following:

	Number of years with organization	Number of years in current position	Total number of accounts	Name of two similar accounts for which this person served in a similar capacity (including company name, city and state, contact name and phone number and/or e-mail address)
Account Executive				
Account Manager				
Clinical Resource				
Implementation Manager				

3. Please describe what online services are available to the State's account management staff for reviewing eligibility, account balances, and payment transactions. Please respond separately for each benefit if your capabilities differ by program (FSA, PTC, and COBRA).
4. Can standard and/or ad/hoc reports be accessed online by the State? If so, what are they?

C. Implementation – All Services (FSA, PTC and COBRA)

1. Assuming a contract award for FSA, PTC and COBRA, in December 2024 and an effective date of July 1, 2025, please confirm (for each program) that and explain how you would be able to successfully implement the corresponding program for a May 2025 open enrollment and a July 1, 2025 effective date.
2. Please confirm that and explain how your organization will lead the implementation process taking direction from the State of Delaware.
3. Please confirm that and explain how you will conduct a pre-implementation testing process, with minimal support from the State, to ensure accuracy of plan administration prior to the effective date and that you will share the results of the testing process with the State.
4. Based on your experience with similar customers/programs, describe any additional resources that will be needed from the State of Delaware during the implementation process. Include an exhibit of a detailed and combined implementation plan including dates/tasks/roles (for both State and vendor resources) for all the programs that you are bidding on.
5. Based on your experience with similar customers/programs, describe:
 - a. Any additional resources that will be needed from the State of Delaware on an ongoing basis for administration.
 - b. The preferred level and frequency of interaction with the State of Delaware to ensure the success of these benefits on an ongoing basis.
6. If you are awarded the contract, how would your organization communicate the change in administrator to State employees?
7. Please provide copies of your sample communications materials, including your standard open enrollment communication materials for your FSA and PTC programs.

D. General Administration – All Services (FSA, PTC, and COBRA)

1. Please confirm that the primary contact and/or lead personnel assigned to the FSA, PTC, and COBRA administration transition/implementation teams and account management teams will attend the vendor interviews, if you are invited to participate (see Section IV.C.5 for additional details). Attendance may be in-person or via webinar though in-person is preferred in a non-pandemic environment. Please confirm for each of services to be procured through this competitive RFP process.
2. Please confirm that and explain how your organization will provide relevant member communications materials, including support for the production and distribution of such materials, at no cost to the State and plan participants. This includes printing and postage.

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(Emails sent directly from the vendor to eligible members are not possible, though program information will be shared in email newsletters sent from SBO.)

3. Please confirm your understanding and agreement that the State maintains flexibility to edit/approve all communication materials.
4. Please confirm your willingness to assist in the timely review of any Open Enrollment communications, Summary Plan Descriptions (SPDs), and all other benefit related materials for the State at no additional cost.
5. Please confirm that the cost of all communication materials is included in your response to Attachment 15, Fee Quote. This should include postage fees. Please separately itemize the cost to develop any custom communications for the State.
6. Please confirm that your organization will provide on-site representation if requested throughout Delaware for health fairs and employee education sessions in late April/early May each year in various locations in all three counties at no cost to the State. (For example, in 2025 there could be four full-day sessions and three half-day sessions.)
7. Please confirm that and explain how you will provide Open Enrollment support that includes participation at in-person enrollment meetings with employees if requested and participating in developing written material. Open Enrollment materials should be made available for website posting and prospective vendors should also anticipate an annual Open Enrollment mailing.
8. Please confirm that you are willing to attend a yearly on-site account management meeting in Dover, Delaware, at no cost to the State.
9. Please confirm that State data will be made available to the State or its authorized agents for purpose of an audit.
10. Please confirm that and explain how, at no cost to the State:
 - a. Your organization can provide ongoing management reports on a quarterly basis. As an exhibit, please provide a sample of your standard management reports.
 - b. All reports listed in Attachments 18.A and 18.B can be provided to the State in an electronic format that is easily manipulated, such as Excel.
11. Please confirm and explain how your organization can provide ad hoc reports as requested. Is there a fee for such reports? If so, please indicate in Attachment 15, Fee Quote. As an exhibit, please provide a sample of a type of ad hoc report that was produced for a client.
12. Please confirm that SBO's administrative staff will have access to an online portal with enrollment information for all programs (FSA, PTC, and COBRA).

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13. Please confirm that and explain how you can administer an Open Enrollment process that is web based as described in Section II. The vendor will capture the information and send an electronic file to the State to upload into the State's benefit administration system. State of Delaware will supply the eligibility file.
14. Please confirm that you can accommodate unique identifiers such as date of birth or a combination of employee ID number and last four numbers of SSN. If you need the full SSNs, please explain why.
15. Please confirm that your organization can and will accept the data elements in the Data File Descriptions and Layouts, Attachment 20.
16. Please confirm that and explain how, in the event of contract termination, you agree to transfer electronically to the State (or to a successor administrator) within thirty (30) days of termination notice all data and participant records necessary for the continued administration of the plan. Your organization must agree to continue operations until the transfer of data has been completed. Please confirm for each of the three services included in this competitive RFP process. See Section V.G.18.d.
17. Please confirm that there is a toll-free customer service number for participants (with voice-mail capability when a representative is not available) and specify if the toll-free number differs between coverages (i.e., FSA, PTC, and COBRA).
18. Please confirm that all calls are recorded for training and to ensure the correct information is conveyed to callers.
19. Please confirm that plan participants will have access to an email customer service address to which participants may direct their concerns and questions regarding account/claims information.
20. Please confirm that:
 - a. Your organization will conduct member satisfaction surveys.
 - b. Surveys would be specific to State participants.
 - c. The State could include its own custom questions in the surveys at no additional cost.
21. Please describe how you would ensure the State's compliance with federal tax laws and reporting requirements for all services procured through this RFP. What resources are available for monitoring regulatory compliance?
22. Please describe your account management and customer service disaster contingency plans and procedures for all services procured through this RFP.
23. How long are records retained? In what manner are they retained? Please respond separately for each program (FSA, PTC, and COBRA).

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24. What is your process for reconciliation of FSA and PTC funding (employee deductions) versus paid claims with the State?
25. Please describe any quality assurance processes and tools in place for all aspects of program administration, including eligibility and enrollment, claims processing, and member services.
26. Will you review FSA and PTC claims for reasonableness? That is, will claims for reimbursement be monitored for excessiveness or possible fraud?
27. Are you able to run an annual audit of your processes and all services rendered to the State and deliver a report with the results? If so, please explain what is provided and if there is any additional cost to the State.

E. Member Services – All Services (FSA, PTC, and COBRA)

1. For the most recent calendar year, please provide the requested information for your proposed member service center location.

	Location 1	Location 2	Location 3
a. Benefit(s) serviced by this location (FSA, PTC, COBRA)			
b. Office location (city, state)			
c. Hours of Operation M-F (specify time zone)			
d. Hours of Operation Sat/Sun (specify time zone)			
e. Number of representatives (“MSR”) (#.##)			
f. % of representatives working remotely (telecommuting)			
g. Average years of experience (#.##)			
h. Ratio of representatives to members (1:xx)			
i. Call blockage rate			
j. Call abandonment rate			
k. Average speed to answer (in seconds) by a live person			
l. Member satisfaction level			

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	Location 1	Location 2	Location 3
m. Average MSR turnover rate			
n. Average duration time of MSR calls (plan's standard performance metric)			
o. Average duration time of MSR calls (unit's actual performance)			
p. First call resolution rate (calls not requiring call back by either party)			

2. Please describe the member service unit that will be assigned to handle the State of Delaware's account as follows:
 - Dedicated unit, members from a single employer,
 - Designated unit, members from a specific a group of employers, or
 - Not a dedicated or designated unit, all members.
3. Is this unit co-located in the same service location with claims payment operations that will be supporting the State?
4. What technology is available to your MSRs during a conversation with a plan participant to access the employee's record of reimbursements and contributions?
5. How does your call center handle non-English speaking callers?
6. Please describe the education, experience, and training requirements for your MSRs.
7. Briefly describe your MSR performance review metrics (random review, volume based, etc.) and the attrition rate and average length of service for your MSRs.
8. Provide a complete description of your customer service procedures from receipt of a question or complaint by telephone and/or letter to complete resolution.
9. What processes do you have in place to handle participant appeals? Also, what is the standard turnaround time for appeals?
10. Describe your current online member service capabilities and information available on your website and mobile device applications that support FSA, PTC, and COBRA services. Provide the website address and if there is a demonstration website available for administrative services, provide that also.

F. Flexible Spending Account Program (FSA) Administration

1. Please confirm that your administration processes match the IRS requirements and are in accordance with all IRS regulations.
2. Please confirm that your organization will collect all documentation and funding for unsubstantiated claims and that you will collect unsubstantiated overpayments within 2.5 months for a payroll deduction or W-2.
3. Please confirm that your organization accepts the term that the State holds the funds in-house after payroll deduction until such time as a claim paid via debit card or participant reimbursement is made.
4. Please confirm that your standard services include the testing of health care FSA (HCFSA) and dependent care FSA (DCFSA) plan benefits for compliance with IRC §105, §125 and §129 nondiscrimination rules.
5. Please confirm you will perform a preliminary, as well as year-end, nondiscrimination testing for the State's DCFSA plan at no additional cost.

1.0 General Administration

1. Provide an overview of the FSA plan administration services you will provide, for both health care FSA and dependent care FSA. In this overview, please include a description of your capabilities to provide limited purpose HCFSA's and whether there are any differences in your administrative capabilities or processes for managing limited purpose HCFSA's vs. "general purpose" HCFSA's. Also, describe how are adjustments to claims and incomplete FSA claims handled?
2. Please describe any automated services available to employees regarding their accounts (e.g., voice response).
3. Upon termination of the contract, how long will issues/questions be addressed for employees and the State? What provisions would be made to provide requested documentation to the State from the beginning to the end of the contract?

2.0 Eligibility and Enrollment

1. How will your organization assist the State in increasing FSA program participation? Please provide a brief response specific to the State's unique situation.
2. Do you have a minimum participation requirement for the FSA? If so, how many? What would happen at the end of each enrollment period if the minimum were not achieved?
3. Please describe your online enrollment process for Open Enrollment.

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4. Please confirm that you will accept FSA eligibility data prior to the beginning of the State's annual Open Enrollment at no additional charge.
5. Please confirm that your organization can accept paper enrollment forms for FSA new hires through the year.
6. Please confirm whether your solution allows for online enrollment year-round. If year-round online enrollment is not available for 7/1/2025, when will it be implemented?
7. Please describe any capabilities you may have to automate the enrollment process for new hires. If there are any fees associated with this, please note them in your response to Attachment 15, Fee Quote.
8. What is your cut-off for accepting retroactive FSA eligibility additions and terminations?
9. As noted in the Background section, the State may announce a change to its benefit administration system in the future. Therefore, the State is interested in understanding your experience in supporting a customer through a change to that customer's benefit administration system. Please describe your experience doing this for customers with your FSA, PTC, and COBRA benefits administration service, particularly when the timing of this sort of system change has not coincided with the start of your contract with the customer.
10. Please describe your capabilities to integrate with a benefit administration system that would allow members to make FSA enrollment elections within the benefit administration system, and an enrollment file is sent to you after the enrollment period ends.
11. Some of the State's current vendor partners can accept participants' enrollment elections via a single sign-on electronic link between the State's online enrollment platform and the vendor partners' enrollment systems. Do you have the ability to support FSA enrollment (initial and/or change processing) in this way? If so, please describe your capabilities, and note any fees associated with establishing this process (including single sign-on) within Attachment 15, Fee Quote. Would you be willing to offer an implementation allowance/credit to help offset any third-party vendor fees associated with implementing this automation?
12. The State recently changed the eligibility waiting period for coverage under the State Group Health Plan and is changing the FSA waiting period to align with the health plan effective July 1, 2024. Currently, benefit eligible employees may enroll in a healthcare or dependent care FSA effective the first day of the month after completing the initial waiting period of 90 days; to align with the health plan waiting period, the FSA waiting period will be reduced to the first day of the month following the date of hire. Please describe any implications that changing this waiting period would have on any services, fees or account support included in your proposal to the State. Please also describe any communications that you could provide to support notifying benefits eligible employees of this change.

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13. Please confirm if you have the ability to support a web-based enrollment process during Open Enrollment (with the State providing an eligibility file at Open Enrollment).

3.0 Plan and Claims Administration

1. Describe the current platform (e.g., mainframe, client service, web, etc.) used for FSA claims administration, and if any changes are planned for the FSA administration system in the next two years.
2. Confirm the target turnaround time for the following:
 - a. Receipt of enrollment data to processing
 - b. Receipt of electronic FSA claim to processing
 - c. Receipt of paper FSA claim to processing
 - d. Frequency of FSA claim reimbursements to participants
 - e. Producing FSA debit cards for open enrollment
 - f. Producing FSA debit cards for new hires/participants
 - g. Producing FSA debit cards for qualifying events
3. Please describe all methods of claim submission and reimbursements you provide and their associated processes for HCFSA and DCFSA.
4. Please describe how your organization will collect all documentation and funding for unsubstantiated claims and how you will collect unsubstantiated overpayments within 2 months for a payroll deduction or W-2.
5. Please confirm whether you currently receive claim file feeds from any of the following vendors:
 - a. Highmark Delaware (Blue Cross Blue Shield of Delaware)
 - b. Aetna
 - c. CVS Health
 - d. Dominion National (dental benefits)
 - e. Delta Dental
 - f. EyeMed Vision Care

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6. How quickly upon receipt can you process claim files? Please provide a brief overview of this process.
7. If you do not currently have interfaces to accept claims from other vendors, are you willing to build them? If yes, how much lead time is required and what is the cost? Please provide a sample of the required file layout.
8. How does your organization handle the overlapping incurred claim periods in a 14½-month plan year? When an FSA claim is submitted, will you use the previous year's dollars before you use current year's dollars?
9. Please confirm your organization can accurately administer the 2 1/2-month grace period for FSA claims. Detail any additional administrative charges for this in Attachment 15, Fee Quote.
10. Please confirm that the State will not be double charged FSA participant fees during the 2½-month grace period. How is this verified?
11. For the FSA claim grace period, when must claims be received for reimbursement, e.g. received by 6/30 or submitted by 6/30?
12. The State would like to reduce risk of loss from terminated employees. Please address the steps you take to reduce this risk.
13. Please detail how you administer mid-year changes to a HCFSA and DCFSA. How do you calculate the new reimbursable maximum and/or maintain separate reimbursable maximums? Mid-year change type:
 - a. Employee terminations
 - b. Changes that result in increased maximums (e.g., birth of child)
 - c. Changes that result in decreased maximums (e.g., divorce)
14. Please describe how the employer/employee funds the HCFSA and DCFSA.
15. What is your standard approach for the following processes:
 - a. Funding of FSA claims. Please include funds transfer method and frequency.
 - b. Do you require an initial bank account deposit (imprest balance)?
 - c. What is your process for handling undisbursed FSA funds?
16. What was your FSA payment accuracy rate for full year 2023?

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17. Please provide the following for all the proposed FSA member services office(s):
 - a. Percentage (%) of claim reimbursement requests for which check was mailed within:
 - i. 7 calendar days of receipt
 - ii. 5 calendar days of receipt
 - b. Average percent of claims handled via auto-rollover by your organization
 - c. Processing accuracy
 - d. Financial Accuracy
 - e. Overall Accuracy
 - f. Payment Incidence Accuracy
18. Will your organization send FSA welcome statements at the start of each plan year? Are these statements customizable for the State?
19. When a member purchases both eligible and ineligible OTC products, are multiple transactions required?
20. Do you offer direct pay dependent care options (scheduled and/or autopay) from a member's account directly to the care provider? If so, please describe.

4.0 Debit Card Capabilities

1. Please confirm that your organization offers a debit card to the HCFSA participants and provide a general overview of your debit card capabilities for HCFSA and DCFSA.
2. Please confirm your willingness to provide a \$0 annual FSA debit card fee at no cost to the State.
3. For participant's optional FSA debit card, please confirm that there will be no initial distribution fee or ongoing fees to align with the current plan.
4. Please confirm there are no transaction fees associated with the use of the FSA debit card.
5. Is there a daily limit on FSA debit card transactions?
6. Please select the options that are available functions of your FSA debit card:
 - a. The FSA debit card can pay for services at the time of service
 - b. The fees are auto-deducted from the FSA account balance

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- c. FSA card messaging is available by text and/or e-mail
 - d. Up to 2 cards are available (per account) free of charge
 - e. Transactions initiated at non-qualified merchants are automatically declined at the point of sale
 - f. Other, describe
7. Do you own and administer the FSA debit card, or does another organization? If it is an outside firm, please indicate your partner and explain in detail the nature of this relationship. Please be sure to disclose this relationship in your response to Attachment 6, Subcontractor Information Form.
8. Do you have a toll-free number to handle provider questions regarding the FSA debit card? If so, what is the location of the office, the service hours, and the current staffing for this function? If not the same as the FSA member services office, how are the two call centers integrated?
9. Confirm the services outlined below are covered by the FSA debit card. Please include any other services that you can cover.
- a. Medical
 - b. Dental
 - c. Vision
 - d. Prescription Drugs
 - e. Over the counter products
 - f. Other
10. How do you ensure that the FSA card is not used for ineligible items/services?
11. How do you determine whether the FSA card is being used for an eligible member under the plan (i.e., that it is not being used for a friend or ineligible participant)?
12. How would the FSA claims administrator know if the participant is paying for a prior year expense with current year funds? What measures are in place to prevent participants from using their card to pay for services incurred in a prior plan year?
13. How do you handle lost or stolen FSA debit cards in terms of access by non-authorized individuals? Is there a fee for a replacement card, and if yes, who pays the fee?

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14. Please provide the number of your clients for whom you provide FSA auto-substantiation services in coordination with each of the following vendors that currently administer benefits for the State:
 - a. Highmark Delaware (Blue Cross Blue Shield of Delaware)
 - b. Aetna
 - c. CVS Health
 - d. Dominion National (dental benefits)
 - e. Delta Dental
 - f. EyeMed Vision Care
15. Please describe the types of auto-substantiation that your organization allows with both the FSA debit card and other types of FSA claim submission for each of the vendors listed in the prior question.

G. PTC Program Administration

1. Please confirm that and explain how your program supports transit pass/voucher functionality
2. How do employees make monthly pass/voucher requests?
3. How are passes and vouchers distributed?
4. What is your process for reporting and managing lost or stolen passes/vouchers?
5. Do enrollments carry over from month to month, or is re-enrollment required? From year to year?
6. Can you accept enrollment for amounts over the tax limit, and allow additional purchases over the tax limit on an after-tax basis?
7. Are there any cases where an employee forfeits money in the plan? Please describe.
8. Please confirm that your organization has an online web portal where employees can change or cancel their PTC enrollment at any time (except for van pool and fleet services).
9. Please confirm that you can administer PTC benefits in accordance with IRS regulations and explain how you stay current with IRS regulations and notify participants and the plan sponsor of such changes?

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10. Can you support both pre-tax and post-tax payroll deductions?
11. Please confirm that your organization accepts the term that the State holds the funds in-house after payroll deduction until such time as a request is made to issue a voucher/fare media or a reimbursement request is made.
12. Please confirm you have the administrative capabilities to:
 - a. Match the State's PTC payroll schedule (see Attachment 19, PTC Payroll Deduction Coverage Schedule).
 - b. Accept an Excel file (Attachment 20, Data File Descriptions and Layouts) from the State's current fleet program.
 - c. Administer PTC benefits for contract and casual/seasonal employees.
13. Please confirm that your program supports both commuter debit cards and transit pass/voucher functionality. Describe your administrative capabilities for each.
14. How do you ensure that the card is not used for ineligible items/services? How do you determine whether an ineligible item/service has been purchased? What is the process for correcting a situation where an ineligible item has been purchased?
15. Describe your processes related to member requests for reimbursements, including any expense substantiation or documentation requirements, payment methods available to employees, frequency of reimbursement, average turnaround times for reimbursement, time limitation, etc.
16. Please confirm that and explain how your organization will work to develop relationships, or continue established relationships, with parking garages in the City of Wilmington at which a significant number of State employees park and attempt to develop, or continue, direct-pay arrangements.
17. Describe any arrangements that you have with contracted parking vendors located in the City of Wilmington. How is reimbursement handled? Voucher system, debit cards, or cash reimbursement? Do any offer discounts that would be passed to our employees? If you are awarded the contract and would be developing relationships with contracted parking vendors located in the City of Wilmington, please include your implementation process in your detailed timeline.
18. How many parking vendors are located in the City of Wilmington that are not under contract with your company? Would you be willing to risk performance guarantees on obtaining contracts with these vendors?
19. The State would like to reduce risk of loss from terminated employees. Please address the steps you take to reduce this risk.

H. COBRA Administration

1. Please confirm that and explain how you administer COBRA in full compliance with the requirements of federal and State law and regulations.
2. Please confirm that and explain how you can administer COBRA that matches the State's current process.
3. Please confirm that and explain how your organization can accept paper enrollment forms for COBRA administration through the year.
4. Please confirm that and explain how your organization has strict policies and procedures in place for the protection of client and member Protected Health Information (PHI) and to avoid security breaches under the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act.
5. Please confirm that and explain how you will act as Plan Administrator as defined by federal regulations and your processes, notices, systems and reporting will be in full compliance with COBRA and HIPAA federal and state continuation requirements. Also confirm that any fines related to non-compliance will be your sole responsibility.
6. Please confirm that and explain how your system is able to administer all other Eligibility and Enrollment Rules (available online at: <https://dhr.delaware.gov/benefits/notices/documents/eer.pdf?ver=0103>).
7. Please confirm that and explain how your organization can maintain separate, secured, and individual access to your online portal for representatives of the Pension Office who should only be able to see State of Delaware pensioners and covered dependents along with a "waiting" or "enrolled" status. Additionally, SBO designated staff must have central/all access.
8. Please confirm that and explain how the State will be able to track and identify (real-time or through ongoing reports) ongoing and new members of the COBRA administration team with access to State of Delaware Employee's Protected Health Information (PHI) and Personally Identifiable Information (PII).
9. The State has a contractual agreement to provide retiree medical services to a closed group of retirees from a division of the State that was divested (Diamond State Port Authority). As part of this process, the State must also provide COBRA administrative services to this closed group. Currently, there are 7 plan participants. Please confirm that you will be able to administer COBRA for this group as part of the broader COBRA services you would provide to the State. If there are any additional fees for COBRA administration for this group, please confirm and indicate those fees within your response to Attachment 15, Fee Quote.

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10. Please describe your standard COBRA administration services.
11. Describe how you would automate the State's COBRA administration processes, specifically for notifying the State's medical, dental and vision carriers of COBRA election changes due to a qualifying event. Today, the COBRA vendor sends email notifications to the medical vendors and manually enters enrollments in the dental and vision vendors administration systems. Automation would include an outbound enrollment file from the COBRA vendor to the State's other health care vendors. What are the minimum data requirements and the potential costs to do so? If there are costs, please remember to document those on Attachment 15, Fee Quote.
12. While the State administers all HIPAA notices today, do you have the ability to provide HIPAA New Hire Notices to State employees and school districts as part of the onboarding process? If so, would you require any additional information beyond the eligibility data provided to you, and would there be an additional fee for this? If so, please note the fee in your response to Attachment 15, Fee Quote.
13. Describe your processes and resources available for staying on the forefront of legislation changes such as the Patient Protection and Affordable Care Act (PPACA) and other legislation that impacts COBRA administration (like the American Recovery and Reinvestment Act (ARRA)). Also describe how you keep your clients informed of such changes.
14. Please describe your member notification procedures.
15. Describe the level to which COBRA notifications, monthly invoices, and annual enrollment notifications can be customized for the State.
16. Do you assume COBRA coverage is declined if no response is received upon expiration of election period or do you send a formal notice confirming declination of coverage?
17. During annual enrollment, do you distribute enrollment letters and packages to all COBRA participants? Please itemize the materials included in the package and any separate communications that are provided to participants who have not yet made their COBRA continuation election (meaning participants who are still in the COBRA election period).
18. How do you notify COBRA participants of rate changes and plan design changes? Are these materials available for the State to review and customize?
19. Please list and describe all services and reasons for COBRA notices for members. Please provide copies of the COBRA notices.
20. Please respond to the following billing/banking-related questions:
 - a. How will the State be billed for administrative fees?

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- b. Do you retain the 2% charge in addition to administrative fees?
 - c. Describe your monthly premium collection and reporting procedures and any differences for insured premiums versus self-funded ASO fees.
 - d. Is the initial monthly invoice prorated based on the date which COBRA continuation is elected?
 - e. Do the monthly invoices detail the coverages enrolled or just a total monthly cost?
 - f. How are COBRA premiums collected and deposited? Do you offer any online/electronic premium payment options?
 - g. Describe how you handle the banking arrangements for the participants' COBRA premiums and distribution. What type of accounts you would propose for the State and what is your strategy for eliminating or minimizing banking fees?
 - h. Detail your reconciliation responsibilities and procedures for COBRA participant billing. The State will require that all reconciliations be performed by the selected vendor.
 - i. In the event that incorrect bank information has been provided, how would you communicate this information to the member for resolution to ensure COBRA coverage was not dropped during the process of correcting the bank information?
21. Please confirm your standard COBRA administration if a participant elects COBRA upon termination of employment (for example, on January 5th) and then becomes Medicare-eligible sometime after that date (for example, a few months later on August 1st). Is the participant allowed to continue his/her COBRA medical coverage? What information is shared with the COBRA participant, if anything?
22. How do you monitor turnaround time to ensure that COBRA notifications are sent to COBRA qualified participants within the required fourteen (14) day time frame? Also, how do you monitor conversion/continuation timeframes?
23. Please describe all data elements that your COBRA administration system can capture and track. Can reports be queried by any of these data elements?
24. Will there be end-user access logs to your system for both State representatives and COBRA participants? For example, John Doe logged in at 4:55 p.m. on Saturday and accessed these specific records.
9. Please confirm that and explain how your system is able to handle multiple coverage termination rules depending on the type of Qualifying Event (QE). Also, confirm if manual intervention is possible or needed.

The State requires that coverage terminates at the end of the month for all QEs except:

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- a. Coverage terminates the day after the effective date of a divorce;
 - b. Coverage terminates the day after a COBRA beneficiary's date of death; and
 - c. Coverage for the ex-spouse of a retiree covered by a Medicare supplement plan with or without prescription coverage will terminate on the last day of the month in which the divorce is final.
25. Describe what other checks and balances are in place to ensure that COBRA event processing is as accurate as possible and to validate the qualifying event file data, such as benchmarking a client's qualifying events against other similar sized companies and profiles, monitoring specific types of events for reasonability (for example dependent child terminations), etc.
26. How long do you maintain beneficiary eligibility, enrollment and premium payment records online?
27. How do you maintain COBRA history (e.g., hard copy, online)? How do you access COBRA history?
28. In the event the COBRA administration is terminated, what are the procedures for continuing to handle qualifying events that occurred prior to termination?

I. Health Savings Account (HSA) Administration

1. Please describe, at a high level, your capabilities for administering health savings accounts.
2. Please describe the following processes:
 - a. Describe how employer deposits to the health savings account are processed.
 - b. How can employees deposit funds into the health savings account?
 - c. After an employee deposits funds into a health savings account, how quickly are the funds posted to the employee's account?
3. What is the IT platform/system you use to administer health savings accounts? And do you plan to modify/migrate any key health savings account administration platforms within the next 24 months? If yes, which systems and when?
4. Can your organization currently administer health savings account deposits/incentives based on the completion of wellness type programs offered by other vendors? How long will it take for you to credit the individual accounts and how soon will this be updated on the website?

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5. Do you currently accept electronic data feeds from multiple vendors indicating wellness program participation tied to health savings account incentive deposits? If so, which vendors?
6. Are you able to track incentive earnings and use of incentive funds separately from employer or employee funding amounts and display this on the member's online account, if requested?
7. Please indicate which health savings account transactions can be fully outsourced to your organization and whether the transactions can be processed electronically vs. requiring some form of intervention and/or support by the SBO.
8. Indicate the methods available for members to access health savings account funds.
9. Do you recommend that HDHP medical claims automatically draw funds from the health savings account?
10. Can you administer automatic claim submission from the HDHP to the health savings account?
11. If not using a debit card, can the member have control of auto-payment/approval to release health savings account funds to providers and/or pharmacies?
12. Describe how the health savings account balances will be adjusted for claim/distribution errors (especially if the member liability that is later determined to be less than originally withdrawn).
13. If a participant's distribution exceeds their health savings account balance due to problems synchronizing accounts, how will your organization handle this situation, including participant communication?
14. Confirm that your organization is responsible for all adjustments and reconciliations for the health savings account if an overpayment or underpayment is made.
15. Confirm that your organization will be responsible for identifying and reporting (to the accountholder) non-qualified withdrawals from the health savings account.
16. Will you and your banking partner setup and accept automatic employer contributions for health savings accounts that are "unopened" (e.g., employee enrolls in HDHP but does not complete health savings account enrollment before employer contributions are sent), in order to establish the health savings account?
17. What is the process for member appeals of health savings account balance errors?
18. If sufficient health savings account funds are not available when the member attempts to use the health savings account to pay for an eligible expense:

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- a. Will you allow the member to setup an auto payback feature that completes the payment when health savings account funds become available? (For example, the member attempts to use their HSA to pay for a \$100 claim but only has \$25 available in their account.)
 - b. Can the member elect to have the health savings account "sweep" its balances as funds are deposited until the claim is satisfied?
 - c. Is there a minimum and/or maximum dollar amount your organization will reimburse a member for in one transaction? If so, what are the amounts?
19. Describe all situations where a health savings account could be overdrawn.
20. Confirm if the proposed administration fees are tiered, based on HSA enrollment. If yes, please provide an exhibit outlining all pricing tiers in your response to Attachment 15, Fee Quote.
21. If you administer both HCFsAs and HSAs on behalf of the same plan sponsor, do you offer any support for members who have an HCFSA with an outstanding balance during the grace period and are enrolled in an IRS-qualified high deductible health plan in order to help them manage their eligibility for making/receiving contributions to their HSA?
22. Confirm your ability to administer a Limited Purpose Health Care FSA offered in conjunction with IRS-qualified high deductible health plans with health savings accounts.

J. Financial

1. Please confirm that on Attachment 15, Fee Quote, you provided rates and fees for a three (3) year contract period beginning effective July 1, 2025. The vendor must guarantee the contract period rates and fees through June 30, 2028, with a rate cap for two (2) additional optional one-year periods that may be exercised at the discretion of the SEBC. The rate caps must be expressed as a percentage increase from the prior year's rates.
2. Please confirm the amount of any allowance/credit for implementation-related activities, such as communications, audits and offset any third-party vendor fees associated with implementing single sign-on and enrollment automation is included in your response to Attachment 15, Fee Quote.
3. Please confirm that all charges are stated on Attachment 15, Fee Quote, including any optional services you provide that were not requested by the State of Delaware. If you include a fee in your response to any question, or state there is no fee, that information must be noted on the Fee Quote form. If a fee is not included on the form, it will be assumed there is no fee for that service, whether or not a question reminds you to include a fee on the Fee Quote form.

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4. Please confirm that the rates or fees quoted in your organization's proposal are firm and will not be recalculated based on actual enrollment as of the effective date of the contract.
5. Please confirm that, if you are selected as the winning vendor, you would not require payment of any start-up costs from the State prior to the effective date of the program. Payment of costs or services prior to the effective date of the contract is prohibited by State statute.
6. Please confirm that your organization agrees that if in the normal course of business, it, or any other organization with which your organization has a working arrangement, chooses to advance any funds that are due to any provider, subsidiary or subcontractor, the cost of such advance must not be charged back to the State except the State must reimburse your organization within the confines of the provisions of a contract.
7. Please confirm that you agree not to appoint any agent, general agent, or broker, nor authorize payment of any kind to a party not approved in writing by the State of Delaware. In addition, please confirm that commission percentages, brokerage or contingent fees are not payable to any agent or broker by the State of Delaware.
8. Please confirm that your organization will submit to the State on its invoice an itemization of the charges and fees, and credit for services provided in the administration of the services. Please also confirm your ability to invoice the State on a monthly basis.
9. Please confirm any overpayments to the participants as a result of processing errors will be your responsibility and any resulting charges will be at your expense.
10. Please confirm your organization is willing to accept the State's performance guarantees and fees at risk, at minimum, as listed in Attachment 16. If you propose higher penalties than the minimums, please indicate those by using a strikeout font and insertion.
11. Please confirm your organization's willingness to negotiate financial and non-financial performance guarantees.

K. Technical Standards and Security Requirements

1. Strong Password Requirement - A strong password requirement is applicable to your member facing secure website if members/participants can access any personally identifiable information. This would typically be for their personal account with claim or claim-type data. It also applies for "super-users", Statewide Benefits Office personnel, for activities such as accessing reports with personally identifiable information. It is not a requirement for the vendor's internal data access system.

The requirement for a strong password is ten (10) characters. The policy document is located at:

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<https://webfiles.dti.delaware.gov/pdfs/pp/Identity%20and%20Access%20Management%20Guidelines.pdf>

Please confirm that and explain how you comply or would by the effective date of the contract if awarded.

2. Additional Data Requests – Please confirm your agreement that if you are awarded the contract and then request additional data, whether or not on a file feed or in a report, the State shall determine the cost of supplying the data and may deny the request.
3. Threats – The SANS Institute and the FBI have released a document describing the Top 18 Internet Security Threats. For your review, the document is available at <https://www.cisecurity.org/controls/cis-controls-list/>. The contract or confirms that any systems or software provided by the contract or are free of the vulnerabilities listed in that document. (A response that security threats are always changing is not acceptable.)
4. Please state whether or not Delaware data will be transmitted via email or accessible on a mobile device. If so, the following requirement applies. <https://webfiles.dti.delaware.gov/pdfs/pp/EncryptionKeyManagementPolicy.pdf>
5. As an exhibit, please provide a diagram with ports that clearly documents the user's interaction with your organization's website and the State. The network diagram should follow the example in Attachment 22, Network Diagram Template.
6. All the terms apply in Attachment 23 State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement, because the data is non-public data. If awarded the contract, your organization must sign the documents as required by the Department of Technology and Information (DTI) and they will be an appendix to the contract. Please review the terms carefully and confirm that you agree with the terms contained therein. If there are terms that you assert do not apply to this engagement, you may provide a reason and explanation in this response. Substantive changes or wordsmithing will not be considered.

L. Miscellaneous

1. Please confirm that your organization will not use the names, home addresses, or any other information obtained about participants of the programs for offering for sale any property or services that are not directly related to services negotiated in the RFP without the express written consent of the State.
2. As an exhibit, please provide a copy of your certificate of insurance with the appropriate types and coverage levels. If you do not have the coverage and are awarded the contract, please confirm your understanding that you must provide a copy of your certificate of insurance before any work is done pursuant to the terms in the RFP and resulting contract. See Section V.G.8.f.
3. Please confirm your organization agrees that upon termination of an insurance contract with your company, your company would remain liable for all pending and unreported claims incurred prior to the termination date.
4. Please confirm your understanding that the State requires your organization to confirm that all services identified in your proposal are provided solely by your organization and identify any services that may be provided by a subcontractor – **including technology platforms and data processing services**. Other examples are graphics, mailing, and printing services. A subcontractor is any company that is under direct contract to perform services for the State's account. Consequently, an example of a business that would provide services on the State's account but is not a subcontractor is the United States Postal Service. Subcontractors are subject to all the terms and conditions of the RFP and the SEBC reserves the right to approve any and all subcontractors. If a subcontractor(s) is involved, note in your response to this question and complete a separate Attachment 6, Subcontractor Information Form, included herein for each subcontractor.
5. Please confirm your organization's acceptance that the payment of a COBRA invoice by the State shall not prejudice the State's right to object or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any costs invoiced therein. Vendor's invoice or payment shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, based on audits, to not constitute allowable costs. Any payment shall be reduced for overpayment or increased for underpayment on subsequent invoices.
6. Please confirm your organization's acceptance that the State reserves the right to deduct from administrative fees that are or shall become due and payable to the vendor under the contract between the parties any amounts which are or shall become due and payable to the State by the vendor.

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7. Please confirm that your organization will not use the State's name, either express or implied, in any of its advertising or sales materials without the State's express written consent.
8. The State acknowledges that a vendor has the right to exercise full control over the employment direction, compensation and discharge of all persons employed by the contract or in the performance of services for their clients. However, please confirm that, if awarded the contract, your organization will attempt to honor the State's request for specific individuals to be assigned to managerial roles in all areas of account management.
9. Please confirm that, if awarded the contract, your organization ("vendor") will provide on an annual basis a Service Organization Control ("SOC") Report that address the internal control over financial reporting of vendor's services (SOC1). A SOC1 report may include multiple reports to reflect all processes and locations utilized by vendor in performing the Services. SOC reports are prepared under the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements (SSAE) 16 and must be prepared by external auditors selected by the vendor with appropriate credentials. Upon the State's request in July each year, the vendor will promptly provide the report(s) and a Bridge Letter(s) to encompass the preceding fiscal year (July 1 to June 30) for the State's auditors. Additionally, the State may request a copy at any time of the SOC1 report that includes the time period covered in a previous Bridge Letter.
10. Please confirm that, if awarded the contract, your organization ("vendor") will provide on an annual basis a Service Organization Control ("SOC") Report that address the internal control over standard operating procedures for organizational oversight of vendor's services (SOC2). A SOC2 report may include multiple reports to reflect all processes and locations utilized by vendor in performing the Services. SOC reports are prepared under the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Attestation Engagements (SSAE) 16 and must be prepared by external auditors selected by the vendor with appropriate credentials. Upon the State's request in July each year, the vendor will promptly provide the report(s) and a Bridge Letter(s) to encompass the preceding fiscal year (July 1 to June 30) for the State's auditors. Additionally, the State may request a copy at any time of the SOC2 report that includes the time period covered in a previous Bridge Letter.
11. Please confirm your acceptance that you will provide copies of all correspondence to all regulatory agencies that apply to FSA, PTC, and COBRA programs.
12. Please confirm your full HIPAA, EDI, and Privacy compliance and that all State member data will be maintained in accordance with applicable federal, state, and local regulations to ensure protection and confidentiality.
13. Please confirm the existence of strict policies and procedures for the protection of client and member Personal Health Information (PHI) and avoidance of security breaches under HIPAA and HITECH. Confirm the existence of breach notification procedures in the event of a release of PHI.

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14. Please confirm your acceptance that, if awarded the contract, you will submit monthly invoices to the State in sufficient detail to support the services provided during the previous month. The State will not pre-pay for services. Additionally, the State has no obligation to pay for COBRA premiums required by this employee-pay-all benefit. The State agrees to pay those invoices within thirty (30) days of receipt. In the event the State disputes a portion of an invoice, the State agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide the vendor a detailed statement of the State's position on the disputed portion of the invoice within thirty (30) days of receipt. The State's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle the vendor to charge interest on the overdue portion at the rate of 0.5% per month.

15. Please confirm your acceptance that, if awarded the contract, unless provided otherwise in the contract, all expenses incurred in the performance of the services, including communications and administration, are to be paid by the vendor.
Please confirm your understanding and acceptance that the State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of the contract.

Appendix A - MINIMUM MANDATORY SUBMISSION REQUIREMENTS

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services. The selected vendor must have at least five (5) years' experience as an organization in providing the type of services to be procured through this competitive RFP process. Please confirm that you have reviewed the Scope of Services included in this RFP and that you have provided these services for other clients. The proposing organization must provide sufficient detail to demonstrate it has experience in working with FSA, PTC and COBRA administration programs similar in size and complexity. Please provide only a broad outline here of the organization's years of experience and qualifications for the services listed in the Scope of Services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.
3. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2).
4. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
5. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.
6. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included. Your company must have proven ability to perform the services described in this RFP. Of your company's current clients, please list three (3) or more references with an excess of 40,000 eligible employees for which you manage FSA for at least 6,000 lives. Please include at least one COBRA client reference with at least 4,500 annual COBRA qualifying events and 73 or more COBRA continuation enrollees. Additionally, please provide references for three (3) terminated and/or expired clients and note the date of termination and/or expiration with the reason.

The total of six (6) references requested should include at least one (1) active and one (1) terminated reference for each type of service (FSA, PTC, COBRA) to be procured through this competitive RFP process. For each reference, indicate any involvement by staff members who will be servicing the State's account in the event of contract award. For references from clients with expired contracts, there are no timing restrictions on how recently the reference and your company terminated the contractual relationship. Please ensure ALL references provided in your response include valid contact information (e.g., name, phone number, email

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address, etc.) and are aware that they will be contacted during the RFP evaluation process.

7. One (1) completed and signed copy of the NDA (See Attachment 9). This is done in ProposalTech.
8. One (1) completed and signed copy of the Data Confidentiality Agreement (See Attachment 11).
9. One (1) completed and signed copy of the Officer Certification Form (See Attachment 12).
10. One (1) completed copy of the Financial Rating Form (See Attachment 13).
11. One (1) completed and signed copy of the Business Associate Agreement (See Attachment 14).
12. One (1) completed Fee Quote (Attachment 15)
13. One (1) completed and signed copy of the State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement (See Attachment 23).
14. One (1) completed and signed copy of the Questionnaire (See Attachment 25). This is done in ProposalTech.
15. All of other Exhibits requested in the RFP.

The items listed above provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

Appendix B – PROFESSIONAL SERVICES AGREEMENT
PROFESSIONAL SERVICES AGREEMENT
for
[ENTER CONTRACT NAME]
Contract No. [Enter Contract Number]

This Professional Services Agreement (“Agreement”) is entered into as of _____, 20____ (Effective Date) and will end on _____, 20____, by and between the State of Delaware, Department of _____, Division of _____, _____ (“Delaware”), and _____, (the “Vendor”), with offices at _____.

WHEREAS, Delaware desires to obtain certain services to _____; and _____.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware’s request for proposals, attached hereto as Appendix _____; and (c) Vendor’s response to the request for proposals, attached hereto as Exhibit _____. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4. Vendor will not be required to make changes to its scope of work that result in Vendor’s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either

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party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from _____, 20__ through _____, 20___. The Contract may be renewed for two (2) one (1) year periods through negotiation between the Vendor and Delaware.
- 2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.
- 2.3. Delaware will pay Vendor for the performance of services described in Appendix _____, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix _____.
- 2.4. Delaware's obligation to pay Vendor for the performance of services described in Appendix _____, Statement of Work will not exceed the fixed fee amount of \$_____. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number ENTER CONTRACT NUMBER on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.6. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.7. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue

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portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.

- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.9. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510>. Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- 2.10. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- 2.11. Invoices shall be submitted to:

3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <https://dti.delaware.gov/technology-services/standards-and-policies/> and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.

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- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project Team	Title	% of Project Involvement

- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

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- 4.1. A project schedule is included in Appendix A.
- 4.2. Any delay of services or change in sequence of tasks must be approved in writing by Delaware.
- 4.3. In the event that Vendor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix A.

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.
- 5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:
 - a. Copies of reports, surveys, records, and other pertinent documents;
 - b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Vendor shall return any original data provided by Delaware.

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

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- 5.7. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- 6.2. Vendor retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.
- 6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.
- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

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To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled, or prepared in connection with the performance of this Agreement.

8. Warranty.

- 8.1. Vendor warrants that its services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.
- 8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:
 - a. the negligence or other wrongful conduct of the Vendor, its agents or employees, or
 - b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.
- 9.2. If Delaware promptly notifies Vendor in writing of a third-party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:
 - a. Delaware's misuse or modification of the Deliverable;
 - b. Delaware's failure to use corrections or enhancements made available by Vendor;
 - c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
 - d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or

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- e. Information, direction, specification, or materials provided by Vendor or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

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

10. Employees.

- 10.1. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Vendor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- 10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee, or independent contractor and with which a party comes into direct contact in the course of the services.
- 10.3. Possession of a Security Clearance, as issued by the Delaware Department of Safety and Homeland Security, may be required of any employee of Vendor who will be assigned to this project.

11. Independent Contractor.

- 11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.
- 11.2. Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

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Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3. Vendor shall be responsible for providing liability insurance for its personnel.

11.4. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Dispute Resolution.

12.1. At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their 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 shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

13. Remedies

13.1. Except as otherwise provided in this Agreement, including but not limited to Section 12 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this Agreement, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

14. Suspension

14.1. Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension. Vendor shall

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not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

14.2. In the event Delaware suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of 30 days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

15. Termination.

15.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

15.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:

- a. Not less than thirty (30) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

15.3. If termination for default is affected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

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

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

15.6. Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 15.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 15.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15.7 In the event of contract termination, Vendor shall electronically transfer to the State of Delaware (or to a successor administrator) within thirty (30) days of termination all data and participant records necessary for the continued administration of the plan. Vendor must agree to continue operations until the transfer of data has been completed.

16. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

17. Assignment; Subcontracts.

17.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

17.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.

17.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

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17.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.

17.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

18. Force Majeure; Applicability.

Neither the Vendor nor Delaware shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:

- a. Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;
- b. Diseases, plagues, quarantine, epidemics or pandemics;
- c. Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or
- d. The State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

19. Non-Appropriation of Funds.

19.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

19.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

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20. State of Delaware Business License.

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2101 or through the Delaware Department of Insurance, whichever is applicable.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or authorization obtained through the Delaware Department of Insurance, whichever is applicable, or initiate the process of application where required.

An application for a Delaware Business License may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue and/or the Delaware Department of Insurance. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

21. Complete Agreement.

- 21.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 21.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 21.3. Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

22. Miscellaneous Provisions.

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- 22.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 22.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 22.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 22.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- 22.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.
- 22.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- 22.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 22.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor's performance and records pertaining to this Agreement at the Vendor business office during normal business hours.
- 22.9. The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.
- 22.10. Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State

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authority during the term of the awarded contract, including those that apply directly to State employees.

23. Insurance.

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
 1. \$1,000,000 combined single limit each accident, for bodily injury;
 2. \$250,000 for property damage to others;
 3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
 4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* § 2118; and
 5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

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Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

ENTER AGENCY NAME
Contract No: ENTER CONTRACT NUMBER
State of Delaware
ADDRESS
ADDRESS

Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

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

24. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, 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.

25. Performance Bond

Contractors awarded contracts are required to furnish a 100% Performance Bond in accordance with Delaware Code Title 29, Section 6927, to the State of Delaware for the benefit of the Agency with surety in the amount of 100% of the specific award. Said bonds shall be conditioned upon the faithful performance of the contract. This guarantee shall be submitted in the form of good and sufficient bond drawn upon an Insurance or Bonding Company authorized to do business in the State of Delaware.

OR

There is no Performance Bond requirement.

26. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing

STATE OF DELAWARE
Department of Human Resources

of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

27. Governing Law.

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

28. Notices.

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

DELAWARE:

(Agency contact address) _____

VENDOR:

(Vendor contact address) _____

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

STATE OF DELAWARE
DEPARTMENT OF _____

Witness

Name

Title

Date

VENDOR

Witness

Name

Title