



REQUEST FOR PROPOSALS (RFP)

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RFP Number: DTI 250067-DI DS\_PRJCT

DIDS Organizational Change Management

Submission Due Date/Time: Tuesday, October 7, 2025, at 2:00 P.M. (EST)

Two-year term with one possible one-year extension

One agreement may be awarded from this solicitation

29 *Del. C.* § 6981 and §6982(b)

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A. PROJECT INFORMATION

This Request for Proposal (RFP) issued by the Delaware Department of Technology and Information (DTI) is for the purpose of acquiring proposals from interested Vendors to provide project management and execution of organizational change management to assist in the provision and revision of standards and processes, communications, and stakeholder engagement.

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

B. PROJECT DESCRIPTION

The Delaware Integrated Data System (DIDS) Team is embarking on the next phase of growth to build a scalable endeavor that is offered as a state enterprise-level service. The selected vendor will be part of the effort of elevating the DIDS team process to the next step of maturity through the creation of stakeholder engagements and steering committee(s), building an ongoing communication plan, identifying gaps in process and governance, and facilitation of collaborative engagements with DIDS stakeholders.

C. FUNDING

This project will be funded through a grant.

D. PROJECT REQUIREMENTS

1. Scope

The selected vendor will provide the following services:

a. Governance:

- i. Provide best practices research or examples for stakeholder engagement for an enterprise level Integrated Data System, for review by the DIDS team
  - ii. Assist in the recruitment of committee members from our stakeholder population
  - iii. Collaborate with the DIDS team and the stakeholders to build a sustainable governance structure to assist with:
    - 1. Task prioritization
    - 2. Enterprise level data protections
    - 3. Enterprise level data engagements and sharing
    - 4. Securing stakeholder commitments and follow-through
- b. Communication
  - i. Build a communication plan for stakeholder engagement, to include, but not limited to:
    - 1. Regular update cadence
    - 2. Periodic virtual gatherings
    - 3. Annual conference
    - 4. Facilitate discussion meetings for ad-hoc topics
  - ii. Build content for messaging, with DIDS team approval through:
    - 1. E-mail distributions
    - 2. Website presence
    - 3. Reports (including DIDS Annual retrospective)
    - 4. Newsletters
- c. Manage the Facilitation of the Annual Conference
  - i. Execution of the agenda with relevant content, also to include:
    - 1. Guest speakers
    - 2. Interactive content
    - 3. Audience engagement
    - 4. DIDS Annual retrospective
  - ii. Budget management
  - iii. Guest list management
  - iv. Session Recording

- v. Physical Logistics
- vi. Hosted in Quarter 4 of 2025 or Quarter 1 2026
- d. Business Process Improvement
  - i. Assist the DIDS team in identifying process and standards gaps
  - ii. Host brainstorming sessions to assist in process improvement
  - iii. Identify opportunities for ongoing improvement in Organization Change Management for the DIDS team

## 2. Qualifications

The selected vendor must have:

- a. Demonstrated commitment to initiatives focused on addressing systemic barriers
- b. Information Technology or IDS Project management experience >5 years
- c. Expertise with State-level Integrated Data Systems (IDS) governance
- d. Expertise with use case development

## 3. Deliverables

The proposed solution will be priced on a fixed-cost basis, with payments tied to specific milestones/deliverables throughout the project lifecycle. A formal acceptance process will be followed for each milestone to ensure that deliverables meet the agreed-upon requirements. Deliverables must be approved by the Department prior to starting each task.

Proposals will provide the percentage breakout for each of the following deliverables:

- a. Governance Charter providing the requirements listed above
- b. Communications Plan, as specified above
- c. Annual Conference execution
- d. Report of identified DIDS Business Process/Organization Change Management gaps with proposed solutions

## E. QUESTIONS

Written requests for clarification of the RFP are to be submitted in the Q&A section of the project listing in the DTI Procurement Portal found here <https://dti.bonfirehub.com/portal>. If you would like to verify receipt of your question(s), or have issues submitting within the portal, contact [DTI\\_Procurement@delaware.gov](mailto:DTI_Procurement@delaware.gov). **The Department's response to questions will be posted, according to the procurement**

schedule, under the project listing in the DTI Procurement Portal and to the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov/>. Vendor names will be removed from questions in the responses released. Questions should include section number, paragraph number, page number, and text of passage being questioned. Deviations from this format will not be accepted.

**F. PROCUREMENT SCHEDULE**

Action Item	Date	Time
Deadline for Questions to ensure response:	Tuesday, September 9, 2025	2:00 P.M. Local Time
Final Response to Questions posted by:	Tuesday September 23, 2025	2:00 P.M. Local Time
Proposals Due by: *	Tuesday, October 7, 2025	2:00 P.M. Local Time

NOTE: Only asterisk (\*) marked date changes will be communicated (via posted Addendums).

**G. PROPOSAL REQUIREMENTS**

Interested Vendors must submit the material required herein or they may not be considered for the project:

1. The Vendor must be registered in the DTI Procurement Portal at or before the time of submission to be considered.
  
2. Proposals must be received before the Proposal Due Date and Time, as identified in the Procurement Schedule for this RFP. Responses submitted by hard copy, facsimile, or e-mail will not be accepted. Responses received after the proposal Due Date and Time will not be considered.

USB flash drive copies of proposals are to be delivered to:

DTI Procurement Services  
RFP: DTI 250067-DI DS\_PRJCT  
Delaware Department of Technology  
801 Silver Lake Blvd.  
Dover, DE 19904

Should the office be closed at the time responses are due (such as an unexpected event or inclement weather) the submission due date shall be the following business day, at the time originally scheduled.

3. You must also upload your submission to the DTI Procurement Portal at: <https://dti.bonfirehub.com/portal>

Important Notes:

- a. Logging in and/or uploading the file(s) does not mean the response is submitted. Users must successfully upload all the file(s) and MUST click the submit button before the proposal due date and time.
  - b. Users will receive an email confirmation receipt with a unique confirmation number once the submission has been finalized. This will confirm that the proposal has been submitted successfully.
  - c. Each submitted item of requested information will only become visible to DTI after the proposal due date and time.
  - d. If the file is mandatory, you will not be able to complete your submission until the requirement is met.
  - e. Uploading large documents may take significant time depending on the size of the file(s) and your Internet connection speed. The maximum upload file size is 1000 MB.
  - f. Minimum system requirements: Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. Java Script must be enabled.
  - g. Please feel free to contact DTI Procurement Service directly at [DTI\\_Vendorservices@delaware.gov](mailto:DTI_Vendorservices@delaware.gov) for technical questions related to your submission. You can also visit the help forum at <https://bonfirehub.zendesk.com/hc>.
4. Submit one (1) original copy of the Proposal. The original must be a .pdf file of the **original signed proposal and should be clearly marked "Original" on the first page** of the document. Proposals cannot exceed sixty (60) pages excluding Required Forms and the Milestone Payment Schedule.
5. Submit one (1) redacted copy of the Proposal. The redacted copy must be a .pdf file of the original signed proposal with any proprietary or confidential **information redacted, and this copy should be clearly marked as "Redacted"** on the first page of the .pdf version of the proposal. The redacted copy is required even if the submission contains no proprietary or confidential information.

Vendors should review Delaware's Freedom of Information Regulations in Section 10002(I) "Public record" of the Delaware Code, <http://delcode.delaware.gov/title29/c100/index.shtml> to determine what information may be considered proprietary or confidential and may be redacted from their proposal.

6. Provide the estimated cost for each deliverable.
7. A Letter of Interest should accompany each proposal to briefly summarize the proposing Vendor's **interest in providing the required services**. A paper copy of this Letter shall be included with the USB flash drive of your proposal. The Letter of Interest is limited to four (4) pages and must indicate the following:
  - a. An understanding of the anticipated assignments, services required, and approach to providing the services required.
  - b. Identify the proposed key staff and from what office location they will be working.
  - c. The location, size, and description of the Vendor.
  - d. Confirmation that the vendor shall not store or transfer non-public State of Delaware data outside of the United States.
  - e. Availability of personnel for immediate placement.
  - f. Subcontractor usage if anticipated. Indicate the percentage of work estimated to be performed by the subcontractor vs. the prime vendor. Also, indicate if the prime consultant has previously worked with the proposed sub and give a brief example of the previous relationship(s).
8. Description of Vendor Capabilities for each of the listed items in Section D. Project Requirements must be clearly addressed in your proposal. Each response must be clearly numbered and aligned with the corresponding item in Section D. All items should be addressed with clear definition of the Vendor's ability to provide service in each area.
9. Staff Qualifications to include:
  - a. Proposed Team: Indicate Name, Position, and approximate percentage of contract cost each member will perform.
  - b. Resumes of Key Personnel Proposed for this Contract; Resume information is limited to eight (8) individuals regardless of affiliation. Each resume is limited to one page.
  - c. Example Projects: Example Projects provided are limited to ten (10) projects. One page for each project.
  - d. Explain how staff is qualified to meet the Project Requirements in Section D.
10. Rating Criteria Support Information Section may be included but must be limited to four (4) pages. This section should be used to provide information

that directly relates to your ability to meet the specific rating criteria cited within the RFP document. Any information beyond this scope will not be considered.

Vendors are encouraged to review the Rating Criteria section of this RFP and 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.**

- 11. Provide at least three (3) business references consisting of current or previous customers of similar scope and value using the form located in Appendix B. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. The User Group will not consider personal references.
- 12. Required Forms. All Vendors responding to the RFP must complete and return the forms located in Appendix B of this document.

No promotional materials or brochures are to be included as part of the submission.

H. RATING CRITERIA

All proposals received in response to this RFP shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the User Group to evaluate proposals:

#	Criteria Description:	Weight
1	Technical Approach	30 %
2	Key Staff and Project Team qualifications	20 %
3	Vendor’s <b>experience</b> related to Integrated Data Systems and Use Case development	20 %
4	Vendor’s experience on similar projects	20 %
5	<b>Vendor’s resources and capability to accomplish proposed work on schedule</b>	10 %
TOTAL:		100%

## I. OVERVIEW OF SELECTION PROCESS

1. User Group appointments are confidential.
2. User Group members will individually score each Vendor's submitted proposal **which determines individual ranking. The Department's ranking is the combined ranking of all Committee members.** Awarded Vendors, in order of ranking, may have the opportunity to negotiate an agreement with the Department. If the Department cannot reach an agreement with the highest ranked Vendor(s), the Department may terminate negotiations and begin negotiations with the next highest ranked Vendor, and so on until an agreement is reached. The Department will notify via email the awarded Vendor(s) of the opportunity to enter into an agreement with the Department. This notification also will include information on the next steps for the agreement process.
3. After the ranking process has been completed, applicable price information may be requested from the successful candidate Vendor(s), such as salary rates for various classifications of personnel and an indirect cost derivation for the most current accounting period.
4. Based upon the **listed criteria and evaluation of each firm's submitted proposal**, the User Group may decide if a small sample task and/or discussions will be held with the most highly qualified consultants. If discussions are held, they will serve to clarify the technical approach, qualifications, and capabilities provided in response to the RFP, after which the User Group will determine the ranking of the candidate firms
5. Rate determination and applicability is subject to audit by the Department. Additionally, candidates should be prepared for the Department to work with your current accounting Vendor to provide information and backup documentation. Full and immediate cooperation is required to avoid delays in execution of an agreement. Failure to cooperate may result in breaking off negotiations and moving to the next ranked Vendor.

## J. PROFESSIONAL SERVICES RFP ADMINISTRATIVE INFORMATION

1. RFP Issuance
  - a. Public notice has been provided in accordance with 29 Del. C. [§6981](#).
  - b. This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov). Paper copies of this RFP will not be available.

- c. 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 [DTI\\_Vendorservices@delaware.gov](mailto:DTI_Vendorservices@delaware.gov) no later than ten calendar days prior to the deadline for receipt of proposals.
  - d. All requests, questions, or other communications about this RFP shall be made submitted via the DTI Procurement Portal found here: <https://dti.bonfirehub.com/login> or to [DTI\\_Vendorservices@delaware.gov](mailto:DTI_Vendorservices@delaware.gov). Communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the Vendor.
2. The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the Vendors' responses. **Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.**
3. Direct contact with State of Delaware employees regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.
4. Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.
5. The User Group 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 contracted 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:
  - Has knowingly failed without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - Has failed to perform or unsatisfactory performance in accordance with terms of one or more contracts;
  - Has violated ethical standards set out in law or regulation; and
  - Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contracted Vendor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

## 6. RFP Submissions

- a. By submitting a bid, each Vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.
- b. Any changes, amendments can be made in the DTI Procurement Portal or to [DTI\\_Vendorservices@delaware.gov](mailto:DTI_Vendorservices@delaware.gov) until the deadline for submission. 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.

7. The State of Delaware 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.

8. Prices quoted in the proposal shall remain fixed and binding on the bidder at least through contract award. The State of Delaware reserves the right to ask for an extension of time if needed.

9. Proposals received after the specified date and time will not be accepted or considered. Sealed packages with the USB flash drive proposals shall be submitted, plainly marked with the proposal title, Vendor name, and time due. Evaluation of the proposals is expected to begin shortly after the proposal due

date. To document compliance with the deadline, the Letter of Interest will be date and time stamped upon receipt.

10. The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened in the presence of State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.
11. 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 within the State of Delaware.
12. The State of Delaware 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 of Delaware's interest is in the quality and responsiveness of the proposal.**
13. It is the expectation of the State of Delaware 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 of Delaware 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.

14. The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, Title 29, Chapter 100 of the Delaware Code ("**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 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.

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate file on their USB Flash drive and within the DTI Procurement Portal, **labeled "Confidential Business Information"** and include the specific RFP number. It **must contain a letter from the vendor's legal counsel** describing the documents representing in good faith that the **information in each document is not "public record" as defined by 29 Del. C. § 10002**, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such the State of Delaware will evaluate to determine whether the procedure described above has been **followed. 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.

15. Multi-Vendor solutions (joint ventures) will be allowed only if one of the venture **partners is designated as the "Prime Vendor". The "Prime Vendor" must be the joint venture's contact point for the State of Delaware and be responsible for the joint venture's performance under the 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 of Delaware, and approval of a request to subcontract shall not in any way relieve 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 of Delaware 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. The State of Delaware expects to negotiate and contract with only the "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.

Any contract that may result from this RFP shall specify that the prime Contractor 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 of Delaware from the full exercise of its options under **the State's Right to Award Multiple Source Contracting** Section of this RFP regarding multiple source contracting.

- b. The Vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows 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 subcontractors must be approved by State of Delaware.

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

16. Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of Vendor. Should Vendor find discrepancies, omissions, unclear or

ambiguous intent or meaning, or should any questions arise concerning this RFP, Vendor **shall notify the State of Delaware's Designated Contact**, through the DTI of such findings at least ten (10) calendar days before the proposal submission deadline. This will allow issuance of any necessary addenda. It will also help prevent the review of a defective proposal and exposure of Vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal. Nothing in this section should be construed to alter the timelines delineated in Section F of this document. Any notifications of discrepancies, omissions, ambiguities, or questions reported within 10 calendars of the submission's deadline will not be considered or applied to **Vendor's original submission**.

17. 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 Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.
18. The State of Delaware 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 of Delaware may deem necessary in the best interest of the State of Delaware.
19. The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware 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 of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your 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 of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

20. Pursuant to 29 *Del. C.* [§ 6986](#), the State of Delaware may award a contract for a particular professional service to two or more Vendors if the agency head

makes a determination that such an award is in the best interest of the State of Delaware.

21. 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. 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 reserves the right to reject any or all bids 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.
22. The State of Delaware reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.
23. Vendor may modify or withdraw its proposal by written request or within the DTI Procurement Portal, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with 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 Vendor offers at that time.

24. If it becomes necessary to revise any part of the RFP, an addendum will be **posted on the State of Delaware's website at [www.bids.delaware.gov](http://www.bids.delaware.gov)**. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contracted Vendor, or its agents.
25. **Any exceptions to the RFP, or the State of Delaware's terms and conditions, or the State's proposed Agreement template** must be recorded on the Exceptions Form provided in Appendix B. Exceptions **to the state's proposed** Agreement template shall be documented using redlines. Acceptance of exceptions is within the sole discretion of the User Group.
26. The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful Vendor(s) for

award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract as a result of this RFP.

Notice in writing to a Vendor of award by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no Vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

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

It should be explicitly noted that the Department 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 Department. The award is subject to the appropriate State of Delaware approvals.

**After all qualifying applicants' proposals have been reviewed, the State of Delaware will engage with the selected Vendor(s), in compliance with 29 Del. C. § 6982. Remaining vendors will be notified in writing of their selection status after negotiations have been completed.**

28. 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.
29. A User Group composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

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 with any and all information that the State of Delaware may deem necessary to make a decision.

30. The User Group shall be comprised of representatives of the State of Delaware. The User Group shall determine 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 Department may negotiate with one or more Vendors during the same period and may, at its discretion, terminate negotiations with any or all Vendors. The User Group shall make a recommendation regarding the award to DTI's **Chief of Administration**, 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.

31. The User Group shall assign up to the maximum number of points for each Rating Criteria to each of the proposing Vendor's proposals. **All assignments of points shall be at the sole discretion of the User Group.**

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 of Delaware to be essential for use by the Team in the bid 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 **User Group's** consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the User Group.

The Team reserves the right to the following:

- a. Select for contract or for negotiations a proposal other than that with lowest costs.
  - b. 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.
  - c. Waive or modify any information, irregularity, or inconsistency in proposals received.
  - d. Request modification to proposals from any or all Vendors during the contract review and negotiation.
  - e. Negotiate any aspect of the proposal with any Vendor and negotiate with more than one Vendor at the same time.
  - f. Select more than one Vendor pursuant to 29 Del. C. §6986. Such selection will be based on the Rating Criteria section found in this RFP.
32. The User Group 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.

33. The User Group 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.
34. After initial scoring and a determination that Vendor(s) are qualified to perform the required services, selected Vendors may be invited to make oral presentations to the User Group. All Vendor(s) selected will be given an opportunity to present to the User Group.

The selected Vendors will have their presentations 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.

The Vendor representative(s) attending the oral presentation 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 discussions and system demonstrations conducted for the State of Delaware are the Vendor's **responsibility**.

#### K. Terms and Conditions

##### 1. Contract Use by Other Agencies

The Department of Technology and Information (DTI) allows other State of Delaware agencies to piggyback on the resulting contract by receiving written approval from the Department prior to engaging the awarded Vendor. The requesting agency will have to provide a letter to DTI from the Vendor allowing them to utilize the Agreement prior to a Participating Addendum being executed. Please contact the DTI Procurement Office by email at [DTI\\_Procurement@delaware.gov](mailto:DTI_Procurement@delaware.gov) to request access to use this contract.

REF: Title 29, Chapter [6904](#)(e) Delaware Code. 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.

## 2. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this 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 this contract resides with the Department and in no way places any obligation upon the awarded Vendor(s).

## 3. General Information

- a. The selected Vendor will be required to enter into a written agreement with the State of Delaware. 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 standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.
- b. The selected Vendor or Vendors will be expected to enter negotiations with the State of Delaware, 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.
- c. **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.
- d. No Vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, 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 bid specifications and the special instructions once it is received by the successful Vendor.

No other terms and conditions shall apply, including terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor.

- e. 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.
  - f. The State reserves the right to extend this 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.
4. 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.

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.

5. 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 State of Delaware employees, contracted Vendors 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.

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

This paragraph does not prevent the employment by a Vendor of a State of Delaware employee who has initiated contact with the Vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the Vendor 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.

7. **The State's proposed** contract terms can be found in the agreement template made part of this RFP as Appendix A.

## APPENDIX A – DTI AGREEMENT TEMPLATE

## APPENDIX B - REQUIRED FORMS

The following completed forms are required to be returned with each proposal:

- NON-COLLUSION STATEMENT
- CONFIDENTIAL INFORMATION FORM
- BUSINESS REFERENCES
- SUBCONTRACTOR INFORMATION FORM (if applicable)
- EXCEPTIONS FORM (if applicable)
- TERMS AND CONDITIONS GOVERNING CLOUD SERVICES AND DATA USAGE AGREEMENT



**Delaware Department of Technology and Information**

**AGREEMENT COVER PAGE**

**AGREEMENT NUMBER DTI250067-DIDS\_PRJCT**

**BETWEEN**

**STATE OF DELAWARE**

**AND**

**<INSERT VENDOR FULL NAME>**

**DIDS Organizational Change Management**

**Department Primary Contact:**

**Amy Miller  
IT Procurement Officer**

**Service Owner:**

**Eric M. Pusey  
Sr. Application Development  
Manager**

**Section:**

**Delaware Integrated Data System  
(DIDS), Data Management Team**

**Vendor Primary Contact:**

**Name, Title**

**Vendor Executive Contact:**

**Name, Title**

**AGREEMENT NUMBER DTI250067-DIDS\_PRJCT**  
**BETWEEN**  
**STATE OF DELAWARE**  
**AND**  
**<Insert Vendor Full Name>**

This Agreement made and the day, month, and year affixed by the signature of the Department of Technology and Information's (DTI) representative by and between the DTI a department created under the laws of the State of Delaware, hereinafter referred to as "Department", and <Insert Vendor Name>, hereinafter referred to as the "Vendor", whose address is <Insert Vendor Street/mailing address and zip code>.

**WHEREAS**, the Department desires to obtain certain services to obtain certain services to provide project management and execution of organizational change management; and assist in the provision and revision of standards and processes, communications, and stakeholder engagement.

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

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

For in the consideration of the premises and mutual agreements herein, Department and Vendor agree as follows:

**1. TERM**

The initial term of this Agreement shall be for two (2) years from the execution date of this Agreement. Upon mutual consent, the term of this agreement may be extended for one (1) year.

The State reserves the right to extend this 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.

**2. SCOPE**

- a. Vendor shall perform for the Department the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- b. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (i) this Agreement (including any amendments or

modifications thereto); (ii) Department's request for proposals, attached hereto as Attachment X; (iii) Vendor's response to the request for proposals, attached hereto as Attachment X; and (iv) DTI's Terms and Conditions Governing Cloud Services and Data Usage Agreement, attached hereto as Attachment X.

- c. The Department 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 the Vendor shall be furnished, without the written authorization of the Department. When the Department desires any addition or deletion to the deliverables or a change in the services to be provided under this Agreement, it shall notify the Vendor, who shall then submit to the Department 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 the Vendor for any aspect of its performance under this Agreement. Once approved an Addendum will be issued for the contract stating the changes. Pricing of changes shall be consistent with those established within this Agreement.
- d. The Vendor will not be required to make changes to its scope of work that result in the Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 2 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

### **3. PAYMENT FOR SERVICES AND EXPENSES**

- a. 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 Department budget and technical review.
- b. The Department will pay the Vendor for the products and services described in Attachment X, Statement of Work. The fee will be paid in accordance with the Price List attached hereto as part of Attachment X.
- c. The Department will consider the Vendor's request to update Attachment X, <Price list, Master Service Agreement, Enterprise Licensing Agreement, Statement of Work, etc.> on a quarterly/monthly/annual basis for additions to the catalog offering only. Changes to Attachment X are not permitted without written approval by the Department.
- d. The State reserves the right to pay by Automated Clearing House (ACH) or

Purchase Card (P-Card). Agencies that are part of the First State Financial (FSF) system are required to identify the contract number DTI250067-DIDS\_PRJCT on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

- e. 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.
- f. Vendor shall submit monthly invoices to the Department in sufficient detail to support the services provided during the previous month. The billing cycle will begin on the first day of each month and end on the last day of each month. Invoices must be received by the tenth day of each month. The Department agrees to pay those invoices within thirty (30) days of receipt. In the event the Department disputes a portion of an invoice; they agree to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of their position on the disputed portion of the invoice within thirty (30) days of receipt. In the event that payment is not made within thirty (30) days of receipt, the State will not be required to pay late fees. 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.
- g. Unless provided otherwise in an Attachment, all expenses incurred in the performance of the services are to be paid by the Vendor. If an Attachment 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.
- h. 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 the Vendor, the Division of Accounting will work with the Department and Vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- i. The Department 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.

- j. Invoices shall be submitted electronically to [DTI\\_Fiscal@delaware.gov](mailto:DTI_Fiscal@delaware.gov).

#### **4. RESPONSIBILITIES OF VENDOR**

- a. 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 DTI published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, 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 the Department caused by Vendor's failure to ensure compliance with DTI standards.
- b. 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.
- c. Permitted or required approval by the Department 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. The Department'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 the Department caused by Vendor's performance or failure to perform under this Agreement.
- d. 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.

- e. Designation of persons for each position is subject to review and approval by the Department. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify the Department 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 the Department. If Vendor fails to make a required replacement within thirty (30) days, the Department may terminate this Agreement for default. Upon receipt of written notice from the Department that an employee of Vendor is unsuitable to the Department for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
- f. Vendor shall furnish to the Department's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- g. Vendor agrees that its officers and employees will cooperate with the Department in the performance of services under this Agreement and will be available for consultation with the Department at such reasonable times with advance notice as to not conflict with their other responsibilities.
- h. 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.
- i. Vendor will not use the Department's name, either express or implied, in any of its advertising or sales materials without the Department's express written consent.
- j. The rights and remedies of the Department provided for in this Agreement are in addition to any other rights and remedies provided by law.
- k. Vendor agrees that the pricing, terms, and conditions offered under this Agreement shall be no less favorable than those provided under any other active Agreement the Vendor holds with any State of Delaware Agency for the same or substantially similar products or services. If at any time during the term of this Agreement it is determined that overlapping or concurrent Agreements with any State of Delaware Agency contain more favorable pricing, terms, or conditions for similar products or services, the lower pricing and/or more favorable terms shall apply to this Agreement, retroactive to the effective date of such overlapping terms. The State shall be entitled to a credit, refund, or adjustment accordingly.

## **5. REPORTS**

- a. One of the primary goals in administering this Agreement is to keep accurate records regarding its actual value/usage. This information is essential in order

- to update the contents of this Agreement 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.
- b. A complete and accurate Usage Report (Attachment X) shall be furnished in an Excel format and submitted electronically, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items and/or services on this Agreement. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to [DTI\\_vendorservices@delaware.gov](mailto:DTI_vendorservices@delaware.gov). Submitted reports shall cover the full month (Report due by January 15<sup>th</sup> will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured, and prices paid. Reports are required monthly, including those with “no spend”. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of this Agreement. Failure to provide the report with the minimum required information may also negate any extension clauses of this Agreement. Additionally, if the Vendor is determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.
- c. In accordance with Executive Order 49, the State of Delaware is committed to supporting its diverse business industry and population. The Vendor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this Agreement. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women’s Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier reporting is shown as **Attachment X**.

Accurate 2nd Tier reports shall be submitted to the contracting Agency’s Office of Supplier Diversity at [DTI\\_vendorservices@delaware.gov](mailto:DTI_vendorservices@delaware.gov) 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 this Agreement has expired by the report due date.

Information on the Delaware Division of Small Business can be found in Attachment X of this agreement.

## **6. QUOTE REQUIREMENTS**

- a. Contractor is required to respond to quote requests in a reasonable timeframe not exceeding five (5) business days unless previously negotiated with requestor.
- b. Reseller/Contractor must honor and guarantee all quotes for thirty (30) calendar days.
- c. Reseller/Contractor quotes must contain:
  - i. Description - Full description of item
  - ii. Quantity - Item quantity requested
  - iii. Unit Price - Quoted cost per item
  - iv. Amount of Mark-up/Discount
  - v. Extended Price - Cost quoted for total quantity of items

## **7. TIME SCHEDULE**

- a. A project schedule is included in Attachment XX.
- b. Any delay of services or change in sequence of tasks must be approved in writing by the Department.
- c. 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 the Department, 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, the Department shall suspend the payments scheduled as set forth in Attachment X.

## **8. STATE RESPONSIBILITIES**

- a. In connection with Vendor's provision of the Services, the Department shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- b. The Department 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.
- c. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by the Department's designated representatives. Department 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.

- d. The review comments of the Department's designated representatives may be reported in writing as needed to Vendor. It is understood that the Department's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.
- e. The Department shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which the Department has available, including as examples only and not as a limitation:
  - i. Copies of reports, surveys, records, and other pertinent documents;
  - ii. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.
- f. Vendor shall return any original data provided by the Department.
- g. The Department shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business Vendors whenever such material is necessary for the completion of the services specified by this Agreement.
- h. Vendor will not be responsible for accuracy of information or data supplied by the Department or other sources to the extent such information or data would be relied upon by a reasonably prudent Vendor.
- i. The Department 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.

## **9. WORK PRODUCT**

- a. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for the Department relating to the services to be performed hereunder shall become the property of the Department and shall be delivered to the Department'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 the Department. The Department shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- b. 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 the Department's rights to the materials, information and documents developed in performing the project. Upon final payment, the

Department 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 the Department. Any and all source code developed in connection with the services provided will be provided to the Department, 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.

- c. 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.
- d. 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. The Department's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

## **10. CONFIDENTIAL INFORMATION**

To the extent permissible under 29 Del. C. § 10001, et seq, the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled, or prepared in connection with the performance of this Agreement. Notwithstanding any language found in any other agreements related to this engagement, if the Department receives a request for information pursuant to Delaware's Freedom of Information Act, the Department will not be required to contact Vendor or obtain approval prior to responding to the request.

- a. Confidentiality and Data Integrity

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

State of Delaware. The control of the disclosure of those data shall be retained by the State of Delaware and the Department of Technology and Information.

The Vendor is required to agree to the requirements in the Confidentiality and Integrity of Data Statement; Attachment X attached and made a part of this Agreement. Vendor employees may be required to sign the statement prior to beginning any work.

## **11. WARRANTY**

- a. 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.
- b. 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 the Department in connection with the provision of the Services, Vendor shall pass through or assign to the Department 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.

## **12. INDEMNIFICATION; LIMITATION OF LIABILITY**

- a. 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:
  - i. The negligence or other wrongful conduct of the Vendor, its agents, or employees, or
  - ii. 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 the Department of any notice of such claim.
- b. If the Department promptly notifies Vendor in writing of a third-party claim against the Department 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 the Department. Vendor will not indemnify the Department, however, if the claim of infringement is caused by:
  - i. The Department's misuse or modification of the Deliverable;

- ii. The Department's failure to use corrections or enhancements made available by Vendor;
  - iii. The Department's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
  - iv. The Department's distribution, marketing or use for the benefit of third parties of the Deliverable or
  - v. Information, direction, specification, or materials provided by Client 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 procure the right for the Department to continue using it, replace it with a non-infringing equivalent, or modify it to make it non-infringing.
- c. The foregoing remedies constitute the Department's sole and exclusive remedies and Vendor's entire liability with respect to infringement.

### **13. EMPLOYEES**

- a. 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 the Department's request for specific individuals.
- b. 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 Vendor, 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 Vendor and with which a party comes into direct contact in the course of the services.
- c. Possession of a Security Clearance, as issued by the Delaware Department Safety and Homeland Security, may be required of any employee of Vendor who will be assigned to this project.

### **14. INDEPENDENT VENDOR**

- a. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent Vendor, and is not an agent or employee of the Department 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 the Department 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.

- b. Vendor acknowledges that Vendor and any subcontractors, agents, or employees employed by Vendor shall not, under any circumstances, be considered employees of the Department, and that they shall not be entitled to any of the benefits or rights afforded employees of the Department, 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. The Department will not provide or pay for any liability or medical insurance, retirement contributions, or any other benefits for or on behalf of the Department or any of its officers, employees, or other agents.
- c. Vendor shall be responsible for providing liability insurance for its personnel.
- d. As an independent Vendor, Vendor has no authority to bind or commit the Department. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

## **15. DISPUTE RESOLUTION**

- a. At the option of, and in the manner prescribed by the Department, the parties 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.
- b. If the matter is not resolved by negotiation, as outlined above, or, alternatively, the Department elects 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 Contract shall be submitted to mediation by a mediator selected by the Department, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the Department Director, for final and binding arbitration. The Department 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 Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits or if Delaware statutory

authority mandates a disclosure of associated records. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

## **16. REMEDIES**

Except as otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Vendor 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.

## **17. SUSPENSION**

- a. The Department may suspend performance by Vendor under this Contract for such period of time as the Department, at its sole discretion, may prescribe by providing written notice to Vendor at least thirty (30) working days prior to the date on which the Department wishes to suspend. Upon such suspension, the Department 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 Contract after the effective date of suspension. Vendor shall not perform further work under this Contract after the effective date of suspension until receipt of written notice from Department to resume performance.
- b. In the event the Department suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of thirty (30) days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Contract to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by the Department based on appropriated funds and approval by the Department.

## **18. TERMINIATION**

- a. 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 Contract through no fault of the terminating party; but only after the other party is given:
  - i. Not less than twenty (20) calendar days written notice of intent to terminate; and
  - ii. An opportunity for consultation with the terminating party prior to termination.
- b. This Agreement may be terminated in whole or in part by the Department for its convenience, but only after Vendor is given:

- i. Not less than twenty (20) calendar days written notice of intent to terminate; and
    - ii. An opportunity for consultation with the Department prior to termination.
  - c. If termination for default is affected by the Department, the Department will pay the Vendor that portion of the compensation which has been earned as of the effective date of termination, but:
    - i. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
    - ii. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to the Department by reason of Vendor's default.
    - iii. Upon termination for default, the Department 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, the Department shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement.
  - d. 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 effected for the convenience of the Department.
  - e. The rights and remedies of the Department and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
  - f. Gratuities
    - i. The Department may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by the Department 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 the Department 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.
    - ii. In the event this Agreement is terminated as hereof, the Department shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
    - iii. The rights and remedies of the Department shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **19. TERMINATION UPON INSOLVENCY**

The State may, at its option and without notice, terminate this Agreement, effective immediately, should Vendor: (1) admit in writing its inability to pay its debts generally as they become due; (2) make a general assignment for the benefit of creditors; (3) institute proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it; (4) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (5) seek reorganization under any bankruptcy act, or consent to the filing of a petition seeking such reorganization; or (6) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs.

## **20. 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.

## **21. IRS 1075 Publication (If Applicable)**

### **a. Performance**

In performance of this Agreement, the Vendor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- i. All work will be performed under the supervision of the Vendor or the Vendor's responsible employees.
- ii. The Vendor and the Vendor's employees with access to or who use Federal Tax Information (FTI) must meet the background check requirements defined in IRS Publication 1075.
- iii. 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 this Agreement. 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 this Agreement. Inspection by or disclosure to anyone other than an officer or employee of the Vendor is prohibited.

- iv. 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.
- v. No work involving returns and return information furnished under this Agreement will be subcontracted without prior written approval of the IRS.
- vi. 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.
- vii. The Agency will have the right to void this Agreement if the Vendor fails to provide the safeguards described above.
- viii. The Vendor shall comply with agency incident response policies and procedures for reporting unauthorized disclosures of agency data.

b. 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 herein, 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 this Agreement. 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 this Agreement. 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 Vendors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of Vendor, 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 not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting Vendor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Vendor must maintain its 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, Vendor 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.

c. Inspection

The IRS and the Agency, 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 this Agreement 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.

## **22. FAIR BACKGROUND CHECK PRACTICES**

Pursuant to 29 Del. C. [§ 6909B](#), the State 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 are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§ 711\(g\)](#) for applicable established provisions.

## **23. VENDOR BACKGROUND CHECK REQUIREMENTS**

- a. If Vendor has access to state property or will come in contact with vulnerable populations, including children and youth, they shall 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 Delaware Sex Offender Central Registry at: <https://sexoffender.dsp.delaware.gov/>
- b. Individuals that are listed in the registry shall be prevented from direct contact in the service of this Agreement but may provide support or off-site premises service for contract Vendors. Should an individual be identified, and the Vendor believes its 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 Agency's sole discretion.
- c. By Agency request, the Vendor shall provide a list of all employees serving this Agreement 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 this *Agreement*. A violation of this condition represents a violation of the terms and conditions of this Agreement, and may subject the Vendor to penalty, including cancellation for cause of this Agreement.
- d. Individual Purchase Orders 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 shall be responsible for the background check requirements of any authorized Subcontractor providing service to an agency pursuant to this Agreement.
- e. Pursuant to 29 Del. C. § 9016G, any employees, contractors, and subcontractors who require access to DTI systems, facilities, or data must

submit to a criminal background check. This criminal background check must include a report of the individual's entire state criminal history record information from the State Bureau of Identification (SBI) or a statement that the SBI Central Repository contains no such information relating to that individual and a report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (FBI) or a statement that the FBI's record contain no such information relating to that individual.

#### **24. ASSIGNMENT; SUBCONTRACTS**

- a. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the Department shall be void. Such consent shall not be unreasonably withheld.
- b. Services specified by this Agreement shall not be subcontracted by the Vendor without prior written approval of the Department.
- c. As part of the Vendors team, Department approved subcontractors for this agreement are listed in Appendix A. Approved subcontractors may be added to or removed from this Agreement upon written approval from the Department as indicated in Appendix A.
- d. Approval by the Department of the Vendor's request to subcontract or acceptance of or payment for subcontracted work by the Department 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.
- e. Vendor shall be and remain liable for all damages to the Department caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor, or its sub-subcontractor.
- f. The compensation due shall not be affected by the Department's approval of the Vendor's request to subcontract.

#### **25. FORCE MAJEURE**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

#### **26. NON-APPROPRIATION OF FUNDS**

- a. 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 the Department 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.

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

## **27. STATE OF DELAWARE BUSINESS LICENSE**

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

## **28. COMPLETE AGREEMENT**

- a. This Agreement and its Appendices shall constitute the entire Agreement between the Department 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.
- b. Terms and conditions inconsistent with, contrary or in addition to the terms and Agreement, together with its Appendices, shall not be added to or incorporated into this Agreement and its Appendices, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Agreement and its Appendices shall prevail and govern in the case of any such inconsistent or additional terms.
- c. Any unilateral terms or conditions on any materials that Vendor generates and proposes as an agreement with the Purchasing Entity (e.g., pre-printed materials, order forms, invoices, browse-wrap or click-wrap terms and conditions) will be null and void and of no consequence whatsoever in interpreting the Parties' legal rights and responsibilities as they pertain to products or services provided by Vendor.
- d. Where a Purchasing Entity or any personnel associated with the Purchasing Entity are required to click-through or otherwise accept or made subject to any electronic terms and conditions to use or access any Product or Service purchased hereunder, such terms and conditions are not binding and shall have no force or effect as to the Product or Service, this Agreement, or the applicable order for the Product or Service.
- e. In case of conflict with any Appendices to this Agreement, this main body of this Agreement will govern. No Purchase order, Quote, Invoice or other

attachment to this Agreement, including without limitation those executed after this main body of this Agreement, will be construed to amend this main body unless it specifically states its intent to "amend" this Agreement, under a clause or section entitled "Amendment," that cites the section or sections amended. Such an amendment executed through an Order will operate only with respect to the subject matter of such Order.

- f. 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.
- g. Vendor may not order any product requiring a purchase order prior to the Department's issuance of such order. 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.

## **29. MISCELLANEOUS PROVISIONS**

- a. 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.
- b. Neither this Agreement nor any Attachment 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.
- c. 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.
- d. 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.
- e. Vendor acknowledges that the Department 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, the Department may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

- f. 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, the Department 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.
- g. 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.
- h. 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 the Department may inspect or audit Vendor's performance and records pertaining to this Agreement at the Vendor business office during normal business hours.
- i. 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.
- j. Vendor(s) who have any employees carrying out any work related to the awarded agreement 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 authority during the term of the awarded contract, including those that apply directly to State employees.
- k. Vendor must provide clear notice to the Department before making any material changes to the Vendor's privacy policy.
- l. A provision that requires the State to be bound by a term or condition that is unknown to the State at the time of the signing of the contract, that is not specifically negotiated with the State, that may be unilaterally changed by the other party, or that is electronically accepted by a State employee will not be enforceable. For the avoidance of doubt, a term or condition will be considered "unknown" if it is not affirmatively communicated to the contract Service Owner or a designee.

### **30. INSURANCE**

- a. 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 this contract,

including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All Vendors must carry the following coverage depending on the type of service or product being delivered.

- i. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
  - ii. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
  - iii. 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.
- b. The successful vendor must carry at least one of the following depending on the scope of work being performed.
- i. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
  - ii. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
  - iii. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- c. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
- d. 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:

Department of Technology and Information  
801 Silver Lake Blvd  
Dover, DE 19904  
ATTN: PROCUREMENT SERVICES

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

### **31. 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.

### **32. PERFORMANCE BOND**

There is no Performance Bond requirement.

### **33. 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 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.

**34. 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.

**35. FORMAL NOTICES**

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

Mail:  
Department of Technology and Information  
801 Silver Lake Blvd  
Dover, DE 19904  
ATTN: PROCUREMENT SERVICES

Email:  
[DTI\\_Vendorservices@delaware.gov](mailto:DTI_Vendorservices@delaware.gov)

**IN WITNESS WHEREOF**, the parties to these presents have executed this Agreement as of the date of execution by both parties below:

State of Delaware  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Vendor: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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**SUBCONTRACTOR APPENDIX X**

**Agreement DTI250067-DIDS-PRJCT**  
**Insert Vendor Name**

**DIDS Organizational Change Management**

Below are the approved Subcontractors for this Agreement:

**Subcontractors:**

1. XXX

2. XXX

EXAMPLE



**SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY**

State of Delaware																		
Subcontracting (2nd tier) Quarterly Report																		
Prime Name:					Report Start Date:													
Contract Name/Number					Report End Date:													
Contact Name:					Today's Date:													
Contact Phone:					*Minimum Required			Requested detail										
Vend or Name *	Vendo r TaxID *	Contra ct Name/ Numbe r*	Vendo r Conta ct Name *	Vendo r Conta ct Phone *	Repo rt Start Date*	Repo rt End Date*	Amount Paid to Subcontract or*	Work Performed by Subcontract or UNSPSC	M/WBE Certifyi ng Agency	Veteran/Servi ce-Disabled Veteran Certifying Agency	2nd tier Suppli er Name	2nd tier Suppli er Addres s	2nd tier Suppli er Phone Numbe r	2nd tier Suppli er email	Descripti on of Work Performe d	2nd tier Suppli er Tax Id	Dat e Pai d	

**Note:** A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format and submitted to the following email address:  
[DTI\\_Vendorservices@delaware.gov](mailto:DTI_Vendorservices@delaware.gov).



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

Supplier Diversity Applications can be found here:

<https://business.delaware.gov/osd/>

Completed Applications can be emailed to: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

For more information, please send an email to OSD:

[OSD@Delaware.gov](mailto:OSD@Delaware.gov) or call 302-577-8477

Self-Register to receive business development information here:

<https://business.delaware.gov/directory-of-certified-businesses/>

**New Address for OSD:**

Office of Supplier Diversity (OSD)  
State of Delaware  
Division of Small Business  
820 N. French Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801

Telephone: 302-577-8477 Fax: 302-736-7915

Email: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

Web site: <https://business.delaware.gov/osd/>

**Dover address for the Division of Small Business**

**Local applicants may drop off applications here:**

Division of Small Business  
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.



**DEPARTMENT OF TECHNOLOGY AND INFORMATION**

William Penn Building  
801 Silver Lake Boulevard  
Dover, Delaware 19904-2407

**CONFIDENTIALITY (NON-DISCLOSURE) AND INTEGRITY OF DATA AGREEMENT**

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

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

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

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

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

Vendor Signature \_\_\_\_\_

Title: \_\_\_\_\_

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

Vendor Name: \_\_\_\_\_

**Contract Number:** \_\_\_\_\_

**Contract Title:** \_\_\_\_\_

**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 subcontractor 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 Technology and Information.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set in the attached Exception Form, 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 Technology and Information.

COMPANY NAME \_\_\_\_\_ (Check one)

NAME OF AUTHORIZED REPRESENTATIVE (Please type or print) \_\_\_\_\_

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL EIN \_\_\_\_\_ STATE OF DELAWARE LICENSE NUMBER \_\_\_\_\_

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



**Contract Number:** \_\_\_\_\_

**Contract Title:** \_\_\_\_\_

**BUSINESS REFERENCES**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. The selection committee will not consider personal references. Please do not list any State Employee as a business reference. If you have held a State contract within the last five (5) years, please provide a separate list of the contract(s).

**Contact Name & Title:**  
**Business Name:**  
**Address:**  
  
**Email:**  
**Phone # / Fax #:**  
**Number of Years Associated:**  
**Type of Work Performed:**


**Contact Name & Title:**  
**Business Name:**  
**Address:**  
  
**Email:**  
**Phone # / Fax #:**  
**Number of Years Associated:**  
**Type of Work Performed:**


**Contact Name & Title:**  
**Business Name:**  
**Address:**  
  
**Email:**  
**Phone # / Fax #:**  
**Number of Years Associated:**  
**Type of Work Performed:**


**Contract Number:** \_\_\_\_\_  
**Contract Title:** \_\_\_\_\_

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NUMBER	2. PRIME VENDOR NAME:	3. MAILING ADDRESS
4. SUBCONTRACTOR		
a. NAME	d. COMPANY OSD CLASSIFICATION: CERTIFICATION NUMBER: _____	
b. MAILING ADDRESS:	4e. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4i. Service-Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
c. CONTACT EMAIL:		
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY ( <i>Signature</i> )	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
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**



**Exceptions Form**

**Agreement Number:**

**Agreement Title:**

Proposals must include all exceptions to the specifications, terms, or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below.

By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP.

<b>Paragraph # and page #</b>	<b>Exceptions to Specifications, terms, or conditions</b>	<b>Proposed Alternative</b>

**Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.**



## 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	✓	✓	<p><b>Data Ownership:</b> 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.</p>
2	✓	✓	<p><b>Data Usage:</b> 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 <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a>), 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.</p>
3	✓	✓	<p><b>Termination and Suspension of Service:</b> 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.</p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>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 <a href="#">certificates of destruction</a> to the State of Delaware.</li> </ul>



**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		✓	<b>Data Location:</b> 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		✓	<b>Encryption:</b> The PROVIDER shall encrypt all non-public <b>data in transit</b> regardless of the transit mechanism. For engagements where the PROVIDER stores sensitive personally identifiable or otherwise confidential information, this data shall be <b>encrypted at rest</b> . The PROVIDER’s encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology <a href="#">FIPS140-2</a> , Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the PROVIDER cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a> .
6		✓	<b>Breach Notification and Recovery:</b> The PROVIDER must notify the State of Delaware at <a href="mailto:eSecurity@delaware.gov">eSecurity@delaware.gov</a> 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 <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a> ) 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		✓	<b>Background Checks:</b> 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,



## 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		✓	<b>Security Logs and Reports:</b> 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		✓	<b>Sub-contractor Flowdown:</b> The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.																					
10		✓	<b>Contract Audit:</b> 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><b>Cyber Liability Insurance:</b> An awarded vendor unable to meet the <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a> 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="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Level</th> <th>Number of PII records</th> <th>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)																						
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**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:** \_\_\_\_\_