

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of April 1, 2014 ("Effective Date") by and between the State of Delaware, Department of Agriculture, Harness Racing Commission (the "State"), and Dalare Associates, Inc., a Pennsylvania corporation, with offices at 217 S. 24th Street, Philadelphia, PA 19146 ("Contractor").

WHEREAS, the State desires to obtain certain equine drug testing services in connection with standardbred horse racing licensed by the State in Delaware; and

WHEREAS, Contractor desires to provide such services to the State on the terms set forth below;

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

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

1. Services.

1.1 Contractor shall perform for the State the services specified in the Appendices to this Agreement, attached hereto and made a part hereof, provided that the services to be performed by the Contractor shall be limited to services for the Harness Racing Commission.

1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) the State's request for proposals, attached hereto as Exhibit A; and (c) Contractor's response to the request for proposals, attached hereto as Exhibit B. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.

1.3 The State 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 Contractor shall be furnished without the written authorization of the State. When the State desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Contractor, who shall then submit to the State 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 Contractor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 Contractor will not be required to make changes to its scope of work that result in Contractor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be for a period of four years from April 1, 2014 through March 31, 2018 and may be renewed for an additional one-year extension at the discretion of the State. The State shall provide Contractor with 30 days advance notice of its intention to renew.

2.2 The State will pay Contractor for the performance of services described in Exhibit A. The fee will be paid in accordance with the payment schedule attached hereto as part of Exhibit B.

2.3 Contractor shall submit monthly invoices to the State in sufficient detail to support the services provided during the previous month. The State agrees to pay those invoices within thirty (30) days of receipt. In the event the State disputes a portion of an invoice, the State agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Contractor a detailed statement of the State's position on the disputed portion of the invoice within thirty (30) days of receipt. The State's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Contractor to charge interest on the overdue portion at the lower of 0.5% per month or the highest legal rate of interest. All payments should be sent to Contractor at 217 S. 24th Street, Philadelphia, PA 19146.

2.4 Unless provided otherwise in Exhibit B, all expenses incurred in the performance of the services are to be paid by Contractor. If Exhibit B specifically provides for expense reimbursement, Contractor shall be reimbursed only for reasonable expenses incurred by Contractor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.5 The State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.6 The State shall subtract from any payment made to Contractor all damages, costs and expenses caused by Contractor's negligence, resulting from or arising out of errors or omissions in Contractor's work products, which have not been previously paid to Contractor.

2.8 Invoices shall be submitted to:

Harness Racing Commission
Administrator of Racing
2320 S. DuPont Hwy.
Dover, DE 19901

3. Responsibilities of Contractor.

3.1 Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Contractor shall follow practices consistent with generally accepted professional and technical standards.

3.2 It shall be the duty of the Contractor 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. Contractor will not produce a work product that violates or infringes on any copyright or patent rights. Contractor shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by the State of any products or services furnished by Contractor shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of its work. the State's review, approval, acceptance, or payment for any of Contractor'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 Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's performance or failure to perform under this Agreement.

3.4 Contractor 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 Contractor's associates and employees under the personal supervision of the Project Manager. The Project Manager is Joseph Strug.

3.5 Designation of persons for each position is subject to review and approval by the State. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Contractor will notify the State 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 State. If Contractor fails to make a required replacement within 30 days, the State may terminate this Agreement for default. Upon receipt of written notice from the State that an employee of

Contractor is unsuitable to the State for good cause, Contractor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 Contractor shall furnish to the State's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 Contractor agrees that its officers and employees will cooperate with the State in the performance of services under this Agreement and will be available for consultation with the State at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 Contractor 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 the State or any other political subdivision of the State.

3.9 Contractor will not use the State's name, either express or implied, in any of its advertising or sales materials without the State's express written consent.

3.10 The rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 Services shall be performed as provided in Exhibits A and B.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by the State.

4.3 In the event that Contractor 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 State, 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 State may suspend any scheduled payments until such time as the project or work is completed.

5. State Responsibilities.

5.1 In connection with Contractor's provision of the Services, the State agrees that its officers and employees will cooperate with Contractor in the performance of services under this Agreement and will be available for consultation with Contractor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.2 The services performed by Contractor under this Agreement shall be subject

to review for compliance with the terms of this Agreement by the State's designated representatives. The State representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Contractor by written notice before the effective date of each such delegation.

5.3 The review comments of the State's designated representatives may be reported in writing as needed to Contractor. It is understood that the State's representatives' review comments do not relieve Contractor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

6. Work Product.

All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Contractor for the State relating to the services to be performed hereunder shall become the property of the State and shall be delivered to the State's designated representative upon completion or termination of this Agreement, whichever comes first. Contractor 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 State. The State shall have the right to reproduce all documentation supplied pursuant to this Agreement.

7. 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.

8. Warranty.

Contractor warrants that its services will be performed in a good and workmanlike manner. Contractor 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.

9. Indemnification; Limitation of Liability.

9.1 Contractor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that: (i) Contractor shall have been notified promptly in writing by the State of any notice of such claim; and (ii) Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If the State promptly notifies Contractor in writing of a third party claim against the State that any Deliverable infringes a copyright or a trade secret of any third party, Contractor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the State.

9.3 In no event shall Contractor be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought, and even if Contractor has been advised of the likelihood of such damages.

10. Employees.

10.1 Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor the State's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save the State harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, 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 State will not provide

or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the State or any of its officers, employees or other agents.

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

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

12. Suspension.

The State may suspend performance by Contractor under this Agreement for such period of time as the State, at its sole discretion, may prescribe by providing written notice to Contractor at least ten (10) working days prior to the date on which the State wishes to suspend. Upon such suspension, the State shall pay Contractor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Contractor shall not perform further work under this Agreement after the effective date of suspension. Contractor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from the State to resume performance.

13. Termination.

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

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by the State for its convenience, but only after Contractor is given:

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

13.3 If termination for default is effected by the State, the State will pay Contractor that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and

b. Any payment due to Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the State by reason of Contractor's default, and

c. Upon termination for default, the State may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the State shall have the right to make an unsolicited offer of employment to any employees of Contractor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of Contractor to fulfill contractual obligations it is determined that Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of the State.

13.5 The rights and remedies of the State and Contractor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 The State may, by written notice to Contractor, terminate this Agreement if it is found after notice and hearing by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of the State 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. In the event this Agreement is terminated as provided in Section 13.6 hereof, the State shall be entitled to pursue the same remedies against Contractor it could pursue in the event of a breach of this Agreement by Contractor. The rights and remedies of the State provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. 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.

15. Assignment; Subcontracts.

Any attempt by Contractor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the State shall be void. Services specified by this Agreement shall not be subcontracted by Contractor, without prior written approval of the State. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way

relieve Contractor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement. Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under this Agreement by Contractor, its subcontractor or its sub-subcontractor. The compensation due shall not be affected by the State's approval of the Contractor's request to subcontract.

16. Force Majeure.

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

17. Non-Appropriation of Funds.

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

18. State of Delaware Business License.

Contractor represents that it is properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* §2502.

19. Complete Agreement.

19.1 This agreement and its Exhibits shall constitute the entire agreement between the State and Contractor 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.

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

19.3 Contractor may not order any product requiring a purchase order prior to the State's issuance of such order. Each Exhibit, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Contractor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Contractor 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. Contractor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Contractor acknowledges that the State has an obligation to ensure that public funds are not used to subsidize private discrimination. Contractor 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 State may declare Contractor in breach of the Agreement, terminate the Agreement, and designate Contractor as non-responsible.

20.6 Contractor 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 State 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.

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

20.8 Contractor 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 State Division of Archives, pursuant to the State Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of the State may inspect or audit Contractor' performance and records pertaining to this Agreement at the Contractor business office during normal business hours.

21. Insurance.

21.1 Contractor shall maintain Professional Liability insurance in the amount of at least \$1,000,000.00 during the term of this Agreement.

21.2. Contractor shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. 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.

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

22. 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. Contractor consents to jurisdiction and venue in the State of Delaware.

23. Notices.

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

To State:
Harness Racing Commission
Administrator of Racing
2320 S. DuPont Hwy.
Dover, DE 19901

To Contractor:
Dalare Associates, Inc.
Joseph Strug, President
217 S. 24th Street
Philadelphia, PA 19146

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

**STATE OF DELAWARE
DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION**

Name: Original on File

Title: Deputy Principal Asst.

DALARE ASSOCIATES, INC.

Name: Original on File

Title: President