

## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of May 1, 2016 (the "Effective Date"), by and between the State of Delaware, Department of Correction ("Delaware" or "DDOC," as appropriate), and Michael Anas Waters ("Vendor").

WHEREAS, Delaware desires to provide Muslim religious services to the DDOC offender population statewide; and

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

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

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

### **1. Services.**

1.1 Vendor shall perform for Delaware the services specified in Appendices 1 and 2 of this Agreement ("Services"), attached hereto and made a part hereof. Vendor shall comply with all DDOC policies and other laws and regulations in performing the Services.

1.2 Any conflict or inconsistency between this Agreement (including any amendments or modifications thereto) and its Appendices shall be resolved in favor of this Agreement.

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the Services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with the pricing established within this Agreement.

1.4 Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current 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 Services contemplated in this Agreement shall be completed no later than April 30, 2017.

2.2 Delaware will pay Vendor for the performance of Services. The fee will be paid in accordance with this Agreement and the payment schedule attached hereto as Appendix 2.

2.3 Delaware's obligation to pay Vendor for the performance of Services will not exceed the fixed fee amount set forth on Appendix 1. It is expressly understood that the Services must be completed by Vendor in an acceptable fashion and in a timely manner, and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all Services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for Services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.

2.4 Vendor shall submit monthly, or periodic, invoices to Delaware seeking payment for Services rendered in the prior month or other billing period. Each invoice shall contain sufficient detail to permit Delaware to determine whether the Services scheduled for that month were performed in accordance with the Agreement. Delaware agrees to pay monthly invoices within thirty (30) business days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt.

2.5 All expenses incurred in the performance of the Services are to be paid by Vendor.

2.6 Delaware 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.

2.7 Delaware may subtract and offset from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, or resulting from or arising out of errors or omissions in Vendor's Services, as well as all other amounts due and owing by Vendor to Delaware under this Agreement.

2.8 Invoices shall be submitted to: DE Department of Correction, 245 McKee Road, Dover, DE 19904 ATTN: Jessica Pantoja

### **3. Responsibilities of Vendor.**

3.1 Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished by Vendor or Vendor's employees or 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 and deliverables furnished pursuant to this Agreement comply with DDOC policies and standards promulgated by the Department of Technology and Information ("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 with DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the Vendor to assure that all Services and products of its efforts are technically sound and in conformance with all pertinent federal, state and local statutes, codes, ordinances, resolutions and other regulations including DDOC policies. Vendor will not provide a Service or 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.

3.3 Permitted or required approval by Delaware of any Services or reports furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's Services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.

3.4 All of the Services specified by this Agreement shall be performed by Vendor or by Vendor's employees or agents under the personal supervision of Vendor. Prior to performing any work under this Agreement, Vendor and Vendor's employees and agents shall submit to any criminal history or other background checks that may be requested by Delaware. DDOC may refuse access to any Delaware facility or to any sensitive information possessed or controlled by Delaware for any person whose criminal history or background check results are not acceptable to DDOC, in its sole and absolute discretion.

3.5 In accordance with the Federal Prison Rape Elimination Act of 2003, and Delaware Department of Correction Policy Number 8.60 "Prison Rape Elimination Act", the Contractor agrees to report allegations of sexual misconduct promptly, fully cooperate with investigation inquiries and participate in training as directed by the Department of Correction, Employee Development Center, within thirty (30) days of entering into contract. Contractor, contractor staff (including volunteers and subcontractors) agree to abide by Department of Correction Policy 8.60. The Contractor acknowledges that all allegations of staff sexual misconduct and/or harassment will be investigated and, if substantiated, will result in discipline up to and including termination. In addition, all substantiated cases will be referred to the Delaware Department of Justice for prosecution. Failure to report such misconduct, delays in reporting, or material omissions shall be grounds for termination. If the Department policy is modified, the Contractor will be notified and shall comply. See Appendix 3 – State of Delaware, Department of Correction Policy Number 8.60 "Prison Rape Elimination Act."

3.6 In accordance with Policy 16.1 and the Department of Correction's Annual Training Plan, as established by the Employee Development Center, the vendor must complete the Contractual Staff Orientation prior to job assignment and any other mandatory training annually identified in the plan.

3.7 Delaware may terminate this Agreement for default if at any time it learns that Vendor's criminal history or background check results are not acceptable to DDOC, in its sole and absolute discretion. Upon receipt of written notice from Delaware that an employee or agent of Vendor is unsuitable to Delaware for good cause, including, without limitation, violation of DDOC policies, or a criminal history or background check that yields results that are not acceptable to DDOC, in its sole and absolute discretion, Vendor shall remove such employee from the performance of Services and substitute in his/her place a suitable employee or agent.

3.8 Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.9 Vendor agrees that he and his employees and agents will cooperate with Delaware in the performance of Services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.10 Vendor has or will retain such employees or agents as Vendor may need to perform the Services required by this Agreement. Such employees or agents

shall not be employed by Delaware or any other political subdivision of Delaware.

3.11 Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.12 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

#### **4. Time Schedule.**

4.1 A project schedule is included in Appendix 1.

4.2 Any delay of Services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that Vendor fails to complete the Services or any phase thereof within the time specified in the Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware may suspend its performance under this Agreement.

#### **5. State Responsibilities.**

5.1 In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in Appendix 1.

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

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

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

5.5 Delaware shall, without charge, furnish to or make available for examination or use by Vendor any documents or data which Delaware has available and which may be necessary to carry out the Services. Vendor shall return all documents and data provided by Delaware upon completion of this Agreement.

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

5.7 Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Absent the express written consent of Delaware, Vendor shall not disclose to any third party any documents or data, or the contents or a summary of any documents or data, or the results of any study, analysis or report, made available to or conducted or prepared by or on behalf of Vendor in connection with this Agreement.

**6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the Services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

**6.2 [Reserved.] OR**

6.2 Vendor retains all title and interest to any data he furnished and/or generated pursuant to this Agreement. Retention of such title and interest shall not conflict with or impair Delaware's rights to the materials, information and documents developed in performing the Services. Upon final payment, Delaware shall have a perpetual, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of any materials or data in which Vendor retains title. Any and all source code developed in connection with the Services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this provision.

6.3 [Reserved.] **OR**

6.3 In no event shall Vendor be precluded from developing materials that are competitive with any final report or other deliverables under this Agreement, irrespective of their similarity to such deliverables. In addition, Vendor shall be free to use his general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of his consulting practice that are used in the course of providing the Services.

6.4 [Reserved.] **OR**

6.4 Subject to Delaware's license and use rights, 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 produced in connection with this Agreement, or used to develop such materials or products.

**7. Confidential Information.**

To the extent permissible under 29 *Del. C.* §§ 10001-10007, and as required by 11 *Del. C.* §4322, and other state and federal laws pertaining to confidentiality, the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

**8. Warranty.**

8.1 Vendor warrants that its Services will be performed in a professional manner in accordance with industry standards and best practices. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. Indemnification; Limitation of Liability.**

9.1 Vendor shall indemnify and hold harmless Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses, (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Vendor, its agents or

employees, or (B) Vendor's breach of any material provision of this Agreement. Vendor shall be notified promptly in writing by Delaware of any such claim.

9.2 If Delaware promptly notifies Vendor in writing of a third party claim against Delaware that any deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the deliverable; (2) Delaware's failure to use corrections or enhancements made available by Vendor; (3) Delaware's use of the deliverable in combination with any product or information not owned or developed by Vendor; (4) Delaware's distribution, marketing or use for the benefit of third parties of the deliverable or (5) information, direction, specification or materials provided by Delaware 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 (a) procure the right for Delaware to use or continue using it, (b) replace it with a non-infringing equivalent, or (c) modify it to make it non-infringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and Vendor's entire liability with respect to infringement.

9.3 [Reserved.]

**10. Employees.**

10.1 Except as provided herein with respect to removal of employees for good cause, and subject to the DDOC's sole and absolute right to maintain safety and security and otherwise manage the operations of its facilities, Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed or utilized by Vendor in the performance of the Services hereunder; provided, however, that Vendor will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the Services or during the twelve (12) months thereafter. For purposes of this Section 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, Vendor shall be, and is, an independent contractor, and is not an agent or

employee of Delaware and shall furnish such Services in Vendor's own manner and method except as required by this Agreement. Notwithstanding any limitation of liability contained herein, Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

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

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

## **12. Suspension.**

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

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

Delaware.

**13. Termination.**

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

- a. Not less than ten (10) 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 Delaware for its convenience, but only after Vendor is given:

- a. Not less than ten (10) calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for cause is effected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, subject to Delaware's rights of offset, but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed Services or other work, and
- b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.

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

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

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

13.6 Gratuities.

13.6.1 Delaware may, by written notice to Vendor, terminate this

Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.

13.6.3 The rights and remedies of Delaware provided in 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.**

15.1 Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent may be withheld by Delaware in its sole and absolute discretion.

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

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

15.4 Vendor shall be and remain liable for all damages to Delaware caused by any subcontractors.

15.5 The compensation due shall not be increased based on Delaware's approval of Vendor'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 Delaware's ability to procure grants or other funding sources. Should such funds not be available when due under this Agreement, Delaware may immediately terminate this Agreement.

**18. State of Delaware Business License.**

Vendor, Vendor's employees and agents and any subcontractors shall be properly licensed and authorized to transact business in Delaware, including without limitation, as provided in 30 *Del. C.* § 2301.

**19. Complete Agreement.**

19.1 This Agreement and its Appendices, together with the Request for Proposal issued by DDOC, DOC1637-MUSLIMSERVICES (the "RFP") and Vendor's response thereto (the "Response"), shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. Any conflict between the terms of the Agreement, the Appendices, the RFP or the Response shall be resolved based on the following order of priority: the Appendices (first priority), the Agreement (second priority), the RFP (third priority), and the Response (fourth priority). 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 Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement

only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, Vendor shall comply with all DDOC policies and 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.

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 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.

20.5 Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

20.6 Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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 Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor's performance and records pertaining to this Agreement.

**21. Insurance.**

21.1 Vendor shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
  - B. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate, **and**
  - C. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate; **or**
  - D. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate; **or**
  - E. Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate.
- 21.2. Vendor shall provide ten (10) days written notice of cancellation or material change of any policies required under this Agreement.
- 21.3. Delaware may request certificate of insurance and/or copies of insurance policies before any work is done pursuant to this Agreement.
- 21.4. In no event shall Delaware be named as an additional insured on any policy required under this agreement.

**22. 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.

**23. Surviving Clauses**

All indemnification obligations imposed and all licenses and assignments of rights granted under this Agreement shall survive termination.

**24. 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 and venue in the State of Delaware.

**25. 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 Delaware:**

Purchasing Services Administrator  
Delaware Department of Correction  
245 McKee Road  
Dover, DE 19904

**To Vendor:**

Michael Anas Waters  
1106 Hyatt St.  
Chester, PA 19013

**SIGNATURE PAGE TO FOLLOW**

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

For the Vendor:

For the Department:

**ORIGINAL ON FILE**

\_\_\_\_\_  
Michael Anas Waters

**ORIGINAL ON FILE**

\_\_\_\_\_  
Robert M. Coupe  
Commissioner  
Delaware Department of Correction

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ORIGINAL ON FILE**

\_\_\_\_\_  
Christopher M. Klein  
Chief, Bureau of Prisons  
Delaware Department of Correction

\_\_\_\_\_  
Date

**ORIGINAL ON FILE**

\_\_\_\_\_  
Janet L. Durkee  
Chief, Bureau of Administrative Services  
Delaware Department of Correction

\_\_\_\_\_  
Date

**ORIGINAL ON FILE**

\_\_\_\_\_  
Kimberly L. Girantino  
Controller  
Delaware Department of Correction

\_\_\_\_\_  
Date

**APPENDIX 1**  
**SERVICE AND BUDGET DESCRIPTION**

1. Contractor: Michael Anas Waters  
Address: 1106 Hyatt St.  
Chester, PA 19013
2. Department: Delaware Department of Correction
3. Service: Statewide Muslim (Imam) Religious Services
4. Term: The initial term of the Agreement shall be executed effective May 1, 2016 through April 30, 2017 with three (3) optional extensions for a period of one (1) year each.
5. Payment: \$20.53 per hour not exceed \$31,500.
6. Payment(s) will be made within 30 days after presentation of invoice(s) submitted with supporting documentation that verifies the completed, acceptable deliverable(s). Invoice must contain period of service, Vendor Invoice Number and itemized description of the services provided to coincide with the contract deliverables.
7. Imam or Islamic Chaplain (“Vendor” or “IC”, as appropriate) shall work up to a maximum of 29.5 hours per week to provide the following Muslim services to the offender population:
  - A. Plan, coordinate and conduct Muslim religious services statewide for the Delaware Department of Correction’s (DDOC) offender population. IC must adhere to the facility security guidelines and conduct services according to each facilities policies and procedures.
  - B. Develop General Muslim Religious Policies Oversight Plan that details activities, readings, discussion groups and/or services offered to the Muslim offender population. Services should be equivalent to a 6 hour day of work or a max of 29.5 hr work week.
  - C. Define and develop standardized policy on the material that will be offered to assist each Muslim in the practice of the religion. Policy must be approved by the Head Chaplain at each facility and/or designee and include the following, at a minimum:
    1. Define how counsel, moral and spiritual support will be provided on a consistent and emergency basis.
    2. Define how religious rites will be handled for Muslim holidays.
    3. Define how the Pillars of Islam will be implemented at each site.
    4. Define how Wudu will be provided and the Salats performed.

5. Define how the 5 prominent divine books will be issued or made available to the Muslim offender population at each facility.
- D. Occasionally conduct services or classes such as Jumuaah service, Islamic Jurisprudence, Arabic Studies, Islamic Morals and Manners and Fundamentals in Islamic beliefs.
- E. Plan, schedule and coordinate religious programs and instruction provided by community religious volunteers to include but not limited to:
1. Recruit, train and oversee assistant religious volunteers, within the offender population to conduct Jumah service only in the absence of the Imam;
  2. Define and develop a plan to evaluate and schedule religious programs and education provided by community volunteers.
  3. Maximize benefits of volunteer programs.
- F. Participate with other DDOC and religious staff professionals and management to provide holistic care and resolve issues that arise.
- G. Foster unity and sense of inclusion among all members of the local Muslim community. The IC shall not discriminate against any Muslim on the basis of Islamic school of jurisprudence, gender, race, national or ethnic origin, citizenship or immigration status, political affiliation, class or economic status. Substantiated reports of such will result in termination of contract.
- H. Counsel individuals and families on a regular basis and times of crisis.
- I. Ensure Moral and spirutal support on a consistent basis and emergency basis.
- J. Submit an Annual Religious Activity Service Plan for the contract term which includes the following and has the capability to be implemented at each facility:
1. Each element should have a corresponding procedural guidance document.
  2. The plan should identify daily activities at the DDOC sites as appropriate.
  3. Activities / Services should be equivalent to a 6 hour day of work initiated at the first site.
- K. Submit a Monthly Religious Activity Service Plan to be benchmarked against Annual Religious Activity Service Plan: (at a minumum should report the following):
1. Number of practicing & non-practicing Muslims at each DDOC site;
  2. List of service and/or activities completed, reassigned to another date, or deleted;
  3. Number of participants for each;
  4. Outcome or result of service / activity;

5. Identify who completed the service; Imam or assignee;
  6. Time spent on the activity;
  7. Identify barriers, challenges, or concerns that exist;
  8. Unexpected achievements; and
  9. Outline plans for the following month.
- L. DDOC will perform a Quarterly Satisfaction and Services Assessment using monthly reports. At that time, revisions to activities / service plan will be discussed to improve satisfaction of services.
8. IC agrees to comply with the Prison Rape Elimination Act Standards/Requirements:
- A. In accordance with the Federal Prison Rape Elimination Act of 2003, and Delaware Department of Correction Policy Number 8.60 "Prison Rape Elimination Act", the IC agrees to report allegations of sexual misconduct promptly, fully cooperate with investigation inquiries and participate in training as directed by the Department of Correction, Employee Development Center, within thirty (30) days of entering into contract.
  - B. IC (including volunteers) agree to abide by Department of Correction Policy 8.60. The IC acknowledges that all allegations of staff sexual misconduct and/or harassment will be investigated and, if substantiated, will result in discipline up to and including termination. In addition, all substantiated cases will be referred to the Delaware Department of Justice for prosecution. Failure to report such misconduct, delays in reporting, or material omissions shall be grounds for termination.
  - C. If the Department policy is modified, the IC will be notified and shall comply. See attached Appendix 3 – State of Delaware, Department of Correction Policy Number 8.60 "Prison Rape Elimination Act."
9. Fleet Vehicle Allowance/Requirements:
- A. IC may be permitted use of a State owned vehicle for approved travel. Advance reservations must be made through the Central Business Office to ensure a vehicle is available.
  - B. The IC agrees to fully cooperate with all State and DDOC Fleet vehicle policies and procedures.
  - C. Eligibility to drive a State owned vehicle includes possession of a valid driver's license and operation of the vehicle strictly for conducting State business. IC shall abide by all motor vehicle laws of the State of Delaware. Failure to adhere to said laws, policies and procedures shall be grounds for termination of driving privileges.
10. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the annexed Professional Services Agreement between DDOC and Michael Anas Waters.

**APPENDIX 2**  
**DEPARTMENT OF CORRECTION REQUIREMENTS**

1. Funds received and expended under the Contract must be recorded so as to permit the Department to audit and account for all contract expenditures in conformity with the terms, conditions, and provisions of this contract, and with all pertinent federal and state laws and regulations. The Department retains the right to approve this accounting system.
2. The Contractor shall recognize that no extra contractual services are approved unless specifically authorized in writing by the Department. Further, the Contractor shall recognize that any and all services performed outside the scope covered by this Contract and attached budgets will be deemed by the Department to be gratuitous and not subject to any financial reimbursement.
3. All documents are expected to be free of misspellings and typos, as well as punctuation, grammatical and design errors. Acronyms should be avoided; when used, they should be spelled out on first reference with the acronym in parentheses after that reference. For example, "Delaware Department of Correction (DDOC)" on first reference.
4. No part of any funds under this Contract shall be used to pay the salary or expenses of any contractor or agent acting for the Contractor, to engage in any activity (lobbying) designed to influence legislation or appropriations pending before the General Assembly and/or Congress.
5. The Contractor agrees that, if defunding occurs, all equipment purchased with Department funds for \$1,000.00 or more and a useful life expectancy of one (1) year, will be returned to the Department within thirty (30) days.
6. If receiving federal funds, the Contractor must comply with all the requirements of the Federal Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Non-profit Organizations.
7. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the annexed Professional Services Agreement between DDOC and Michael Anas Waters.

**APPENDIX 3**  
**[CBO TO INSERT COPY OF DOC POLICY 8.60 (PREA)]**