

APPENDIX D – SAMPLE PROFESSIONAL SERVICES AGREEMENT

For EDUCATIONAL SEMINARS (MOVING-ON) Contract No. DOC18051-MOVINGON

This Professional Services Agreement (“Agreement”) is entered into as of _____, 20__ (Effective Date) and will end on _____, 20__ by and between the State of Delaware, Department of Correction (“Delaware” or “DOC” as appropriate), and _____. (“Provider”).

WHEREAS, Delaware desires to provide enhanced educational seminars for female offenders located at the Hazel D. Plant Women’s Treatment Facility; and

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

WHEREAS, Delaware and Provider 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 Provider agree as follows:

1. Services.

- 1.1. Provider shall perform for Delaware the services specified and in Appendices of this Agreement (“Services”), attached hereto and made a part hereof. Provider shall comply with all DOC policies and other laws and regulations in performing the Services.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware’s request for proposals, attached hereto as Exhibit ____; and (c) Provider’s response to the request for proposals, attached hereto as Exhibit _____. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Provider 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 Provider, 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 Provider for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4. Provider will not be required to make changes to its scope of work that result in Provider’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 two years from _____, 20__ through _____, 20__ with two (2) optional extensions for a period of two (2) years for each extension.
- 2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.
- 2.3. Delaware will pay Provider for the performance of services described in Appendix _____. The fee will be paid in accordance with this Agreement and the payment schedule attached hereto as Appendix _____.
- 2.4. Delaware's obligation to pay Provider for the performance of services will not exceed the fixed fee amount set forth in Appendix _____. It is expressly understood that the Services must be completed by the Provider in an acceptable fashion and in a timely manner, and it shall be the Provider'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 Provider.
- 2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.6. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Providers shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.7. Provider shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to send Provider a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Provider to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Provider's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.

- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Provider.
- 2.9. 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.
- 2.10. Delaware shall subtract from any payment made to Provider all damages, costs and expenses caused by Provider's negligence, resulting from or arising out of errors or omissions in Provider's work products, which have not been previously paid to Provider.
- 2.11. Invoices shall be submitted to: DE Department of Correction, 245 McKee Road, Dover, DE 19904 ATTN:

3. Responsibilities of Provider.

- 3.1. Provider shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all Services furnished by Provider, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified Services, Provider shall follow practices consistent with generally accepted professional and technical standards. Provider shall be responsible for ensuring that all Services, products, and deliverables furnished pursuant to this Agreement comply with DOC 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 to DTI standards, Provider shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Provider shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Provider's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Provider to assure that all services and products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations including DOC policies. Provider will not produce a work product that violates or infringes on any copyright or patent rights. Provider 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 products or services furnished by Provider shall not in any way relieve Provider of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Provider'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 Provider shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Provider's performance or failure to perform under this Agreement.

- 3.4. All of the services specified by this Agreement shall be performed by the Provider or by Provider's employees or agents under the personal supervision of the Provider. Prior to performing any work under this Agreement, Provider and Provider's employees and agents shall submit to any criminal history or other background checks that may be requested by Delaware and shall comply with all DOC policies. DOC may refuse access to any Delaware facility or to any sensitive information possessed or controlled by Delaware for any person not conforming to DOC policy or whose criminal history or background check results are not acceptable to DOC, 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 Provider 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. Provider, Provider staff's (including volunteers and subcontractors) agree to abide by Department of Correction Policy 8.60. The Provider 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 Provider will be notified and shall comply. A copy of the current State of Delaware, Department of Correction Policy Number 8.60 "Prison Rape Elimination Act" is available online at:
http://www.doc.delaware.gov/downloads/policies/policy_8-60.pdf
- 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 Provider may be required to complete the Contractual Staff Orientation prior to job assignment and any other mandatory training as may be required in the annual plan.
- 3.7. Delaware may terminate this Agreement for default if at any time it learns that Provider's criminal history or background check results are not acceptable to DOC, in its sole and absolute discretion. Upon receipt of written notice from Delaware that an employee or agent of Provider is unsuitable to Delaware for good cause, including, without limitation, violation of DOC policies, or a criminal history or background check that yields results that are not acceptable to DOC, in its sole and absolute discretion, Provider shall remove such employee from the performance of Services and substitute in his/her place a suitable employee or agent.
- 3.8. Provider shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.9. Provider agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

- 3.10. Provider has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.11. Provider 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 .
- 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 Provider fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware may suspend the payments scheduled as set forth in Appendix 1.

5. State Responsibilities.

- 5.1. In connection with Provider's provision of the services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Provider in the performance of services under this Agreement and will be available for consultation with Provider at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Provider 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 Provider 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 Provider. It is understood that Delaware's representatives' review comments do not relieve Provider 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 Provider as it may request, any data which Delaware has available, including as examples only and not as a limitation:
 - a. Copies of reports, surveys, records, and other pertinent documents;

- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Provider shall return any original data provided by Delaware.

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

6. Work Product.

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Provider 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. Provider 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. Provider retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Provider retains title, whether individually by Provider or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.
- 6.3. In no event shall Provider 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, Provider shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.
- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Provider prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive

property of Provider even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

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

8. Warranty.

- 8.1. Provider warrants that its services will be performed in a good and workmanlike manner. Provider 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 Provider for Delaware in connection with the provision of the Services, Provider shall pass through or assign to Delaware the rights Provider obtains from the manufacturers and/or suppliers 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. Provider 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 Provider, its agents or employees, or;
 - b. Provider's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, and Provider was notified promptly in writing by Delaware of any notice of such claim.
- 9.2. If Delaware promptly notifies Provider in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Provider will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Provider will not indemnify Delaware, however, if the claim of infringement is caused by:
 - a. Delaware's misuse or modification of the Deliverable;
 - b. Delaware's failure to use corrections or enhancements made available by Provider;
 - c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Provider;

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

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

10. Employees.

- 10.1. Except as provided herein with respect to removal of employees for good cause, and subject to the DOC's sole and absolute right to maintain safety and security and otherwise manage the operations of its facilities, Provider has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Provider in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- 10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

- 11.1. It is understood that in the performance of the services herein provided for, Provider shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Provider 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. Provider acknowledges that Provider and any subcontractors, agents or employees employed by Provider 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. Provider shall be responsible for providing liability insurance for its personnel.

11.4. As an independent contractor, Provider 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 Provider under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Provider at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay Provider its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Provider shall not perform further work under this Agreement after the effective date of suspension. Provider 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 Provider for any cause other than the error or omission of the Provider, for an aggregate period in excess of 30 days, Provider shall be entitled to an equitable adjustment of the compensation payable to Provider under this Agreement to reimburse Provider for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

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 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 Provider 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 default is effected by Delaware, Delaware will pay Provider 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 Provider at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Provider's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Provider shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Provider assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4. If after termination for failure of Provider to fulfill contractual obligations it is determined that Provider 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 Provider provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6. **Gratuities.**

- a. Delaware may, by written notice to Provider, 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 Provider or any agent or representative of Provider to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Provider it could pursue in the event of a breach of this Agreement by Provider.
- c. The rights and remedies of Delaware 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.

- 15.1. Any attempt by Provider to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- 15.2. Services specified by this Agreement shall not be subcontracted by Provider, without prior written approval of Delaware.
- 15.3. Approval by Delaware of Provider's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Provider 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. Provider shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Provider, its subcontractor or its sub-subcontractor.
- 15.5. The compensation due shall not be affected by Delaware's approval of the Provider'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.

- 17.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.
- 17.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. State of Delaware Business License.

Provider 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.

19. Complete Agreement.

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

20. Miscellaneous Provisions.

20.1.In performance of this Agreement, Provider shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Provider 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.Provider 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. Provider 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.Provider acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Provider 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 Provider in breach of the Agreement, terminate the Agreement, and designate Provider as non-responsible.

20.6.Provider 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. Provider shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Provider's performance and records pertaining to this Agreement at the Provider business office during normal business hours.

21. Insurance.

21.1. During the term of this Contract, the Provider shall, at its own expense, carry insurance with minimum coverage limits as follows:

- a. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate, and;
- b. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate, or;
- c. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate, or;
- d. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

21.2. If the contractual service requires the transportation of Departmental clients or staff, the Provider shall, in addition to the above coverage, secure at its own expense the following coverage:

- a. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than \$100,000 each person and \$300,000 each accident, and;
- b. Automotive Property Damage (to others) - \$25,000

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

21.4. 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:

**STATE OF DELAWARE
DEPARTMENT OF CORRECTION
245 McKee Road
Dover, DE 19904
ATTN: Purchasing Services Administrator**

21.5. In no event shall the State of 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 Provider 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 Provider 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 Provider shall meet and confer about coordination of representation in such action.

23. 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. Provider consents to jurisdiction venue in the State of Delaware.

24. Notices.

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

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

PROVIDER:

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 Provider:

For the Department:

Name _____ Date _____
Title _____
Company _____

Commissioner _____ Date _____

Chief _____ Date _____
Bureau of Correctional Healthcare Services

Chief _____ Date _____
Bureau of Administrative Services

Purchasing Administrator _____ Date _____