



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Services for Aging and Adults with Physical Disabilities

Contract No. 35-1400-2017-64
CATS Sys Doc ID: 018869-0002-0000

PROFESSIONAL SERVICES AGREEMENT For RESPITE CARE SERVICES

This Professional Services Agreement ("Agreement") is entered into as of October 1, 2016 and will end on September 30, 2017, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults with Physical Disabilities ("Delaware"), and Addus HealthCare, Inc. (the "Vendor"), with offices at 2300 Warrenton Road, Suite 100, Downers Grove, IL 60515-1765.

WHEREAS, Delaware desires to obtain certain services for: Respite Care Services.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof, including Appendix A, Divisional Requirements; Appendix B, HIPPA Business Associate Agreement; Appendix E, Policy Manual for Contracts; and, the other appendices, as referenced.
- 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 proposal, **HSS-14-001**, attached hereto as Appendix F; and (c) Vendor's response to the request for proposal, attached hereto as Appendices D, Budget and G, Work Plan. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

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

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from October 1, 2016 through September 30, 2017.
- 2.2. Delaware will pay Vendor for the performance of services described in Appendix C, Service Specifications. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D, Contract Budget.
- 2.3. Delaware's obligation to pay Vendor for the performance of services described in Appendix G, Work Plan, will not exceed the fixed fee amount of **\$487,281**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4. 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 **35-1400-2017-64** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.5. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.6. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.7. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

- 2.8. 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.
- 2.9. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- 2.10. Invoices shall be submitted to: william.abernathy@state.de.us, or as directed.

3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager.
- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause,

Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

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

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do

not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:

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

Vendor shall return any original data provided by Delaware.

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

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

5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

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

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

6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any

ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

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

- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
- e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

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

10. Employees.

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

11. Independent Contractor.

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

insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

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

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

12. Dispute Resolution.

12.1. At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

13. Suspension.

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

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

suspension of performance by Delaware based on appropriated funds and approval by Delaware.

14. Termination.

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

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

14.2. 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 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

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

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

14.4. 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.

14.5. 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.

14.6. Gratuities.

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

- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. 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.

16. Assignment; Subcontracts.

- 16.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- 16.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 16.3. 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.
- 16.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- 16.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

17. Force Majeure.

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

18. Non-Appropriation of Funds.

- 18.1. 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.
- 18.2. 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.

19. State of Delaware Business License.

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

20. Complete Agreement.

20.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

20.2. 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.

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

21. Miscellaneous Provisions.

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

21.2. 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.

21.3. 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.

21.4. 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.

- 21.5. 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.
- 21.6. 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.
- 21.7. 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.
- 21.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* ' 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22. Insurance.

22.1. 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.
- b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. As applicable and determined necessary by the State, the Vendor shall also maintain:

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. 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 as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

22.4. 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:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy.
New Castle, DE. 19720

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

23. 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.

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 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:

DELAWARE:
Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building Annex – Room 107
New Castle, DE. 19720
Attn: Contract Manager

VENDOR:
Addus HealthCare, Inc.
2300 Warrenville Road, Suite 100
Downers Grove, IL 60515-1765

Contract No. 35-1400-2017-64
CATS Sys Doc ID: 018869-0002-0000

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 State of Delaware:
Division of Services for Aging & Adults with
Physical Disabilities (DSAAPD)

Original On File

Witness

Original On File

/ for Lisa Bond
Director, DSAAPD

8-10-16
Date

For the Contractor:
Addus HealthCare, Inc.

Original On File

Witness

C
8/4/2016

Original On File

Diane Kumarich
V.P. National Contracts

8/4/16
Date

APPENDIX A: *Divisional Requirements*

APPENDIX A: *Divisional Requirements*

Sanctions – Revised 6/22/16

The Division reserves the right to reduce the number of people a Contractor currently serves, restrict the number of referrals a Contractor may receive, or rescind authorization to operate one or more service sites (e.g., neighborhood home, apartment) or any combination of such measures as sanctions for documented unsatisfactory contract performance as determined by the Division. The Division may impose such sanctions for a period of between 30 to 365 days, with the right to renew the sanctions at the Division's sole discretion.

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.
7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. 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 lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.

10. The contractor acknowledges that no state or federal funds may be requested unless the contractor has the local resources to meet the required match, if applicable. These resources may not be used as match for any other program. Failure of any contractor to document and provide the budgeted required match could result in an audit finding and the funds returned to the Division.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 13 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.
17. The contractor of an Older Americans Act program acknowledges that the total cost of the contract, excluding program income, must include a 10% match of non-DSAAPD resources (e.g. local cash and/or in-kind that is provided by the contractor). Any budget items - including salaries and/or fringe benefits - used for the match must not be from Federal or State Funds and must not be used as a match for another program. During the year-end closeout, the contractor will refund all unmatched DSAAPD funds as required by Federal regulations.

APPENDIX B: *HIPPA Business Associate Agreement*

APPENDIX B: HIPAA Business Associate Agreement

RECITALS

WHEREAS, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the "Agreement") which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate ("CE Affiliate") that involve the use or disclosure of Protected Health Information ("PHI") that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the "HIPAA Rules") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as "HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), as each is amended from time to time. The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI.

WHEREAS, Business Associate provides Respite Care Services for Covered Entity pursuant to a contract dated October 1, 2016 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information ("PHI") to Business Associate (collectively, the "Master Agreement");

WHEREAS, Business Associate, in the course of providing services to Covered Entity, may have access to PHI and may be deemed a business associate for certain purposes under HIPAA;

WHEREAS, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity's knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

WHEREAS, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate's obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

NOW, THEREFORE, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.

2. **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:

(a) **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.

(b) **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:

- (i) use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;
 - (ii) use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
 - (iii) de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.
- (c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.
- (d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.
 - (i) To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.
 - (ii) The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.
 - (iii) Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.
- (e) **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.

(f) **Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.

(i) In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.

(ii) Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.

(ii) Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

(g) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.

(h) **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

(i) **Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. §164.528 and any subsequent regulations issued thereunder. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.

(j) **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:

(i) for Covered Entity to comply with its access obligations in accordance with 45 C.F.R. §164.524 and any subsequent regulations issued thereunder; and

(ii) for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R. §164.526 and any subsequent guidance.

(k) **HITECH Compliance Dates.** Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.

3. **Obligations of Covered Entity.**

- (a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, including disclosure of data to insurers and health plans when the patient pays for medical services in full and requests that such notification not be made, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (c) Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

4. **Term and Termination.**

(a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.

(b) **Termination Upon Breach.**

(i) Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Master Agreement.

(c) **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.

(d) **Effect of Termination.**

(i) To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

(ii) If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate

agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

(iii) Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

5. **Miscellaneous.**

(a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

(c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

(d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

(e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

(f) **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

(g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Covered Entity to comply with HIPAA and any subsequent guidance.

(h) **No Third Party Rights.** Except as stated herein, the terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities

whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.

(i) **Applicable Law.** This BAA shall be governed under the laws of the State of Delaware, without regard to choice of law principles, and the Delaware courts shall have sole and exclusive jurisdiction over any dispute arising under this Agreement.

(j) **Judicial and Administrative Proceedings.** In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.

(k) **Transmitting Electronic PHI.** Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 42 C.F.R. § 164.402.

6. **IN WITNESS WHEREOF**, the Parties hereto have executed this BAA to be effective on the date set forth above.

Covered Entity
Original On File

By:

for Name: Lisa Bond

Title: Director, DSAAPD

Date: 8-10-16

Original On File

By:

Name: Diane Kumarich

Title: V.P. National Contracts

Date: 8/4/16

APPENDIX C: *Service Specifications*



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

Revision Table

Revision Date	Sections Revised	Description
11/26/13		Original
12/18/13	6.1.6.1	Deleted: <i>The agency must complete a caregiver and care recipient assessment form as provided by DSAAPD.</i>
7/7/16	6.1.10- 6.1.12;; 6.1.11.1, 6.1.11.2	Added requirements that agency must notify CSP when services are cancelled.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

1.0 SERVICE DEFINITION

- 1.1 Respite care provides short-term relief to caregivers who support the needs of older persons; persons with Alzheimer's disease or related dementias; or adults with physical disabilities. Respite care is provided in the home of the care recipient or caregiver and can be provided in the absence of the caregiver or while the caregiver remains in the home.

2.0 SERVICE GOAL

- 2.1 The goal of respite care is to provide a caregiver with relief from the demands of caregiving. The intent is to maintain the caregiver's health and well-being; reduce stress, and prevent exhaustion while ensuring continuous care for the care recipient.

3.0 SERVICE UNIT

- 3.1 The unit of service for respite care is one hour.

4.0 SERVICE AREA

- 4.1 Respite care is available to all eligible persons within Delaware subject to availability of the service.
- 4.2 Providers may apply for sub-areas of the State.

5.0 ELIGIBILITY

- 5.1 DSAAPD staff will determine eligibility for respite care and authorize service hours.
- 5.2 In order to qualify for the service, a care recipient must:
- 5.2.1 Be a resident of the State of Delaware.
 - 5.2.2 Be unable to perform at least two activities of daily living (ADL's) (basic activities such as eating, bathing, dressing, toileting, and mobility) without substantial human assistance or be in need of substantial assistance because of behavior that poses a serious safety risk.
 - 5.2.3 Currently receive substantial in-home care from a caregiver.
 - 5.2.4 Fall within one or more of the following eligibility groups:
 - 5.2.4.1 Person aged 60 or over.
 - 5.2.4.2 Person of any age with Alzheimer's disease or related dementia.
 - 5.2.4.3 Person aged 18 or over with a physical disability.
- 5.3 DSAAPD staff will apply additional eligibility and/or targeting criteria based on requirements of the service funding source(s), as appropriate.
- 5.4 DSAAPD will establish service caps based on available funds. Respite service hours may be authorized by DSAAPD staff above established caps in cases of emergency or extreme need.

6.0 SERVICE STANDARDS

- 6.1 Respite services must meet or exceed the following standards:
- 6.1.1 The provider must meet and comply with all Federal, State and local rules, regulations and standards applying to the service being provided.
 - 6.1.2 The provider must be a Delaware-licensed home health agency or personal assistance services agency.
 - 6.1.3 The provider must be able and willing to provide respite care seven (7) days a week with extended hours as needed.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

- 6.1.4 Provider staff must be fully trained and professionally qualified in accordance with applicable licensing requirements with supplemental training provided, as appropriate, to support the provision of care to the population served through this program.
- 6.1.5 The provider must maintain, follow, and continually update a training and supervision program to ensure that respite staff is fully trained and familiar with agency procedures.
- 6.1.6 In-home case assessments must be completed within five (5) working days of receipt of the service referral from DSAAPD.
- 6.1.7 A plan of care must be developed for each new care recipient within five working days after assessment.
 - 6.1.7.1 The plan must identify those services to be provided to the care recipient to relieve the caregiver.
 - 6.1.7.2 The caregiver must play an integral role in the development of the plan to ensure that the hours and services provided meet his/her needs and the needs of the care recipient.
- 6.1.8 Assessments, plans of care and other service records must be kept in a secure location to protect confidentiality.
- 6.1.9 The provider must coordinate with DSAAPD on the maintenance and submission of needed service-related data.
- 6.1.10 The provider must notify DSAAPD of problems which threaten consumer service.
- 6.1.11 The provider must notify DSAAPD and the consumer in writing two weeks prior to termination of services to any one consumer.
 - 6.1.11.1 The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
 - 6.1.11.2 The notification must include the proposed plan of care that will be provided during the two week period.
- 6.1.12 The provider must give DSAAPD thirty days' notice if terminating five or more consumers at a given time.
- 6.2 Allowable activities:
 - 6.2.1 The agency must have the capacity to provide, at a minimum, the following service components based on the care recipient's individualized care plan:
 - 6.2.1.1 Household duties such as light cleaning, laundry and meal preparation.
 - 6.2.1.2 Personal care services for the care recipient such as bathing, shampooing, shaving, dressing and toileting.
 - 6.2.1.3 Companionship.
 - 6.2.1.4 Training / Instruction / Cueing.
- 6.3 Prohibited activities:
 - 6.3.1 For purposes of planning and reimbursement, respite care may not include any of the following:
 - 6.3.1.1 Lawn care, garden care, raking or snow removal.
 - 6.3.1.2 Heavy-duty cleaning, furniture moving, or other heavy work.
 - 6.3.1.3 Financial or legal advice or services (except for referral to qualified agencies or programs).



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

7.0 INVOICING REQUIREMENTS

- 7.1 The provider will invoice DSAAPD pursuant to the DSAAPD Policy Manual for Contracts, Policy Log Number X-Q, Invoicing, utilizing the DSAAPD provided Invoicing Workbook for the Respite Care service (IW-017 & IW-018).

8.0 CONTRIBUTIONS

- 8.1 DSAAPD staff will inform care recipients, family members, and/or caregivers of the cost of providing respite service and will offer them the opportunity to make voluntary contributions to help defray the cost, thereby making additional service available to others.
- 8.1.1 DSAAPD staff will, with the care recipient and/or caregiver, determine the recommended contribution amount per unit of service. The amount will be documented by DSAAPD on the service referral form.
- 8.2 Providers must have procedures in place to:
- 8.2.1 Protect privacy and confidentiality with respect to contributions.
- 8.2.2 Safeguard and account for all contributions.
- 8.2.3 Use the contributions to expand services.
- 8.3 No eligible participant will be denied service because of his/her inability or failure to make a contribution.

APPENDIX D: *Budget*

Unit Cost Match Contract Budget

Agency: **Addus HealthCare Inc dba Addus HomeCare**

Program/Service: **Respite Care Services**

Contract Year: **October 1, 2016 - September 30, 2017**

SSBG

A.	Provider Unit Cost	\$26.38
B.	Planned Service Units - Contract Year	2,132
C.	Total Resources Needed	
a.	Maximum DSAAPD Resources (A x B)	\$56,243

OAA Programs (Title III)

A.	Provider Unit Cost	\$26.38
B.	OAA (Title III) Match Requirement	\$2.93
C.	DSAAPD Reimbursement Rate (A - B)	\$23.45
D.	Planned Service Units	18,382
E.	Total Resources Needed:	
a.	Maximum DSAAPD Resources (C x D)	\$431,038

DSAAPD Funding Required **\$487,281**

Contract Value with Required Match **\$541,160**

Unit Cost Match Breakdown

Agency: Addus HealthCare Inc dba Addus HomeCare

Program/Service: Respite Care Services

Contract Period: October 1, 2016 - September 30, 2017

Unit Cost Breakdown	Unit Cost Total
Staff Salaries	\$17.39
Fringe Benefits	\$5.14
Travel & Training	
Travel (Mileage x .40 per mile)	\$1.21
Training	\$0.19
Contractual	
Rent	\$0.63
Electricity	\$0.04
Heat/Other Utilities	\$0.00
Phone/Internet/Media/Postage	\$0.22
Insurance	
Repairs/Maintenance	
Supplies	\$0.30
Other: Identify (ID) in Methodology	
Equip/Other: ID in Methodology	\$0.63
Indirect/Other: ID in Methodology	\$0.63
Total Unit Cost	\$26.38

Methodology of Unit Cost Breakdown

Aides' salary costs = composite wage rate X No. of budgeted contract hours. Admin staff costs = est. time spent by position to support the contract X their annual salary. Support Dept. salaries = the % of each program's revenue to the total revenue of all programs. Increases in average composite wages for Aide's and Admin staff; cost of living/merit increases.

Vacation (2.5%); Holiday (2.3%); Training (1%); Lockout (.05%); Travel (5.2%); Sick (.46%); FICA/FUTA/SUTA (9.46%); Gen Liability (.7%); WC (5.25%); and Health (2.6%). The sum equals the 29.52% total benefit rate. There were decreases in Travel Wages, FUTA, SUTA, General Liability and Health Insurance and increases in Sick Pay.

Travel Cost represents the estimated mileage 62,055 times a reimbursement rate of \$.40 a mile paid to the employee.

Training Cost represents those costs related to the training of employees providing direct services to clients. These costs include, but are not limited to, supplies used, meals provided and space related rental costs.

Rent cost is a pro-rata share of annual rent costs allocated based upon the percent of each program's revenue to the total revenue of all programs times annual anticipated rent expense for the budgeted fiscal year.

Electricity cost is a pro-rata share of annual electricity costs allocated based upon the percent of each program's revenue to the total revenue of all programs times annual anticipated electricity expense for the budgeted fiscal year.

Telephone/Internet/Postage cost is a pro-rata share of annual costs allocated based upon the percent of each program's revenue to the total revenue of all programs times annual anticipated Telephone/ Internet expense for the budgeted fiscal year. Telephone costs include local, long distance, cell phone, and internet service.

Office Supplies cost is a pro-rata share of annual office supply costs allocated based upon the percent of each program's revenue to the total revenue of all programs times annual anticipated office supply expense for the budgeted fiscal year. forms, letterhead, computer and copy paper, file folders, pens, pencils, bathroom supplies, and all other supplies.

Equipment Costs are a pro-rata share of annual equipment costs allocated based upon the percent of each program's revenue to the total revenue of all programs times annual anticipated equipment expense for the budgeted fiscal year. Non-capitalized equipment under \$500 such as computers, printers, fax machines, book cases, desks, chairs, etc.

Indirect Cost represents costs related to Addus Support Management which indirectly add to the ability of Addus' local service branch to provide quality service. The Indirect cost dollars are divided by the branches' total actual revenue to produce an indirect cost percentage. This percentage is applied against the budgeted salary costs.

These indirect costs are allocated based upon the operating units' (or branches') costs of sales relative to total company costs of sales.

APPENDIX E: *DSAAPD Policy Manual for Contracts*
(Included by Reference)

Link to DSAAPD Policy Manual for Contracts:

http://dhss.delaware.gov/dhss/dsaapd/files/dsaapd_provider_manual.pdf

APPENDIX F: *Request for Proposal*

Included by Reference: ***HSS 14-001***

APPENDIX G: *Work Plan*

Provider Work Plan for Respite Care Services

Provider Name:	Addus HealthCare, Inc. d.b.a Addus HomeCare
Contract Year:	Current Year

SERVICE AREA

Providers are to specify the Service Area (s) for which they will provide Respite Care services for the contract year (i.e. list STATEWIDE; or, NEW CASTLE, KENT, and/or SUSSEX, as appropriate).

STATEWIDE

For situations where an agency is providing service in only SUB-AREAS of a County, please indicate **ALL ZIP codes, by County**, for which the provider **DOES NOT** accept Respite Care referrals under your current Work Plan:

ZIP CODES

New Castle County	NA
Kent County	NA
Sussex County	NA

WORK PLAN / LICENSURE

Please describe any consumer needs that your agency **cannot** accept under your current Work Plan or State Licensure:

Addus home health agency cannot accept a consumer who is a threat to themselves or others, or a consumer who lives in conditions that are unsafe for the consumer or the assigned care provider, or a consumer who has been diagnosed with a condition that is medically unstable and is not fit to be cared for in the consumers home.

Respite Services: effective June 15, 2016

G. PROPOSED METHODOLOGY AND WORK PLAN

This section shall describe in detail the approach that will be taken to carry out the activities described in the Scope of Services section of this RFP. Specific completion dates for the various tasks must be shown. The workplan shall outline specific objectives, activities and strategies, and resources.

Addus is proposing to provide Respite Care services to eligible Delaware consumers. These consumers will be referred by and be authorized for services by DSAAPD Community Services Program Case Managers. As a current contracted provider of Respite services under Older Americans Act Title III funding and Delaware SSBG funding, Addus is familiar with the program requirements and the processes established by DSAAPD.

Work Plan

This section must explain your approach for operating a program, which meets the Service Specification requirements. At a minimum, the Work Plan description must provide information which describes how you will meet the criteria listed in the Service Specifications (Attachment 2) for each of the following areas: Service Definition; Service Goal; Service Unit; Service Area; Service Eligibility; Service Standards; and, Invoicing requirements. Also, describe your agency's internal evaluation and monitoring process regarding the program.

Proposals will be evaluated by the soundness of the bidder's proposed approach to operating the program. Emphasis will be given to the comprehensiveness of the bidder's understanding of the tasks to be completed and the methodologies to be used.

This section must describe the proposed approach for operating Respite Care statewide; or, in a particular County or Area (e.g. if the proposal is not for statewide services).

Service Definition

This proposal will deliver Respite Care services that provide short term relief to caregivers who currently provide care and support for older adults, those suffering from Alzheimer's or other forms of dementia, and adults with physical disabilities in their home.

Service Goal

Addus' goal is to provide the DSAAPD with a service package that will meet the goal to provide relief from the day-in and day out demands of providing care. By providing relief from caregiver demands, the desired outcome is to improve caregiver overall well-being in the form of reduced stress and the prevention of caregiver fatigue. Respite Care will allow for caregiver relief without interruption of the necessary support of activities of daily living that allow care recipients to remain at home.

Service Unit

This proposal and supporting budget was developed with one unit of service equal to one hour of Respite Care.

Services Area

Addus is proposing to provide Respite Care services statewide in the counties of Kent, Sussex and New Castle. The company presently has trained staff [Home Care Aides and Nurse Case managers] available in all geographic areas of the state.

Eligibility

By the time a client is referred to Addus for services DSAAPD staff will have determined eligibility and authorized the service hours. As a long time provider of Respite services in the state, Addus is familiar with the eligibility qualifications listed under section 5.2 of the Service Specifications. Addus will through our practice of integrated care methodologies and change in condition reporting alert DSAAPD Case Managers of changes that may impact eligibility

Service Provision

All Respite care services under this proposal will be provided in compliance with service specification guidelines and according to federal state and local rules and regulations. Addus meets service standard qualifications as a licensed Home Health Agency in the state of Delaware. A copy of our current Home Health Agency license has been provided under ***Attachments C***.

Respite Care will be provided by a trained Home Care Aides under the direction of an LPN or RN Supervisor in accordance with licensure requirements. Our direct service providers are well versed in providing all of the specific services included in the authorized service tasks for the Respite program. Each direct service staff member has on file a skills checklist that indicates the skills in which he or she is qualified. This includes such tasks as, language skills, cultural sensitivity, consumer populations served, etc. — any factors that would increase the likelihood of a successful match with a referred consumer.

As is a current provider of Respite Care for DSAAPD we do not foresee the need to recruit a large number of new employees upon contract start date. That said, Addus can and has expanded our workforce quickly, to accommodate significant increase in referrals. We accomplish this through ongoing recruitment efforts, and regularly scheduled orientation and training programs given throughout the year.

Hiring/Recruitment of Staff:

Addus recognizes the need for an on-going, extensive and intensive screening program for applicants to ensure that those selected have the capability, motivation, skills, dependability, flexibility and personality appropriate to meet the standards of the agency.

Our employee screening process is based upon the following selection criteria:

1. Mature individuals with an adequate knowledge of (or willingness to learn) food preparation, housekeeping procedures and with the good judgment, patience, interpersonal relationship skills, and sense of humor to help them cope with various types of situations in a home.
2. Mature individuals who demonstrate both good physical and mental health and maturity toward their work assignments.
3. Mature individuals who demonstrate ability to work under supervision as employees of the service delivery staff agency.

4. Mature individuals who have had or receive, following their service delivery staff appointments, adequate training and experience in home management and the care of aging and chronically ill individuals in various disease categories.
5. Mature individuals who show the ability to deal with minor emergencies which could arise on their assignments and to work under stress when a crisis occurs, and who can also recognize their limitations in meeting emergencies and crisis situations.
6. Mature individuals who show ability to communicate orally with the families to which they are assigned and both orally and in writing with the service delivery staff agency representatives to whom they are responsible. They should be able to maintain statistical records appropriate to their job assignment.
7. Mature individuals who show ability to understand and respect the need for confidentiality in regard to the details of their assignments and the problems of the families/individuals involved.

Each Home Care Aide is screened prior to employment in the following manner:

1. The appropriate supervisory staff of the agency will carry out a comprehensive initial interview with the applicant.
2. The service delivery staff will be chosen for a number of personal qualifications including their interest and concern for people, a warm outgoing and pleasant personality, flexibility in and objectivity toward their work.
3. Reasons for the applicant's interest in the service will be explored in depth with emphasis on personal experiences that have influenced the individual's application and his/her attitudes and feelings regarding potential recipients of his/her help, e.g., the aging, blind, deaf, sick, or handicapped.
4. References will be secured from individuals other than family members. These include previous employers, clergy, doctors and professional friends.
5. The RN or LPN Supervisors carefully observe the Home Care Aides attitude and job performance during the orientation and the three-month probationary period.
6. The RN or LPN Supervisors conduct a final interview once the Home Care Aide has successfully completed the orientation. This interview aids in determining the Home Care Aide's capability to perform in the field.

Training and Maintenance of Technical Skills

Our Home Care Aides are equipped with the skills and training necessary to deliver services according to a care recipient's plan of care. Before an Aide is assigned to a recipient they will receive pre-service orientation to the company policies and procedures as mandated by the state and our contractual agreements.

Annually, Addus provides scheduled in-service training to all Home Care Aides. When required, supplemental training (i.e. videotapes or direct Nurse mentoring) is provided to assure an Aides' proficiency with tasks in the care plan. These materials are designed to maintain and augment skill development needed to support special care plans or conditions. Every employee who provides direct care service must complete the required number of ongoing in-service trainings each year. - Home Aides are encouraged to continually develop and hone the skills needed to support individual client services.

As a national company with well over 18,000 Home Care Aides, we consistently review and update training service delivery practices to enhance our company's ability to provide quality services efficiently and effectively. In the future as an enhancement to our GPS enabled telephony devices for time in/time out and service task delivery, we plan to have to make short training and technique videos available to our Home Care Aides for reference on their telephony devices.

All orientation, training, skills verification, and continuing education are documented in the Aide's personnel file. Addus training documentation includes the topic covered, the date of the training, length of the training session, name(s) of trainers, name(s) and signature(s) of employees in attendance and the location of the training. The office will maintain a record of training completed by each employee.

Service Delivery

When the caregiver (and care recipient) is referred for Respite services, the Addus Nurse Case Manager will conduct an in-home case assessment within five (5) working days of referral. The Nurse Case Manager assesses the care recipient, and gains input from the caregiver, and then establishes a specific plan of care. The plan of care will be established within five (5) working day requirement and is often completed sooner. The plan of care is communicated to the Home Care Aide prior to the first service date. A copy of the care plan is available in the consumer's home.

Addus will assign a Home Care Aide to the care recipient within five (5) working days of Addus' in-home case assessment. Once the referral is received the consumer will be contacted by the Case Manager, Director of Patient Care Services (DPCS) or Scheduling Coordinator to discuss any skills their Home Care Aide should possess. Once a Home Care Aide is identified as a match and assigned to a particular consumer, the Administrator Scheduling Coordinator will contact the consumer to give the name of the Home Care Aide and schedule the first date of service.

Consistency is important when providing Respite or any type of in-home care services. As such every attempt is made to keep the Home Care Aide assigned to a care recipient with that care recipient during the course of the authorized respite services. Caregivers will be notified of any changes in schedule or the need for a substitute Home Care Aide. Care recipients will be reassessed at the frequency consistent with our license requirements.

The following steps are taken from consumer referral to service provision:

- a. Intake form completed by Addus,
 - RN Case Manager/Nurse Supervisor is notified of referral, and
 - Nurse receives copy of intake form.
- b. Nurse contacts caregiver/family member to schedule in-home assessment visit.
- c. Nurse visits caregiver and care recipient to outline services and gather information to develop plan of care.
- d. A Formal care plan is developed by Nurse.
 - Care plan includes caregiver and care recipient schedule that best fits caregiver needs.
- e. A copy of the care plan is posted in the care recipient's home and a copy kept in the client's chart at the office.
- f. Addus Nurse identifies Home Care Aides that match requirements of care recipient.

- g. Addus Nurse or Scheduling Coordinator contacts caregiver with visit schedule.
- h. Home Care Aide visits care recipient:
 - Home Care Aide completes time sheet including date/time of visit. Each week the consumer signs time sheet.
 - Consumer initials time sheet during each visit,
 - Home Care Aide completes task section of time sheet outlining services provided and any comments regarding client
- i. If a change in client status is noted, the Home Care Aide contacts the Agency to notify and receive direction
 - The Nurse or Scheduling Coordinator prepares a note regarding change in consumer status.
 - The Nurse or Scheduling Coordinator notifies the Home Care Aide so the care plan can be updated based upon consumer change,
- j. Nurse or Scheduling Coordinator contact consumers within three (3) to Five (5) visits to review services and Home Care Aide match.
- k. Home Care Aide submits time sheet to office.
 - Consumer signatures are verified with previous signature to verify authenticity,
 - Nurse or Administrative Personnel enters time sheet to automated payroll/billing system,
 - If any discrepancies are noted the Nurse or Scheduling Coordinator contacts the consumer directly to discuss the care,
 - Nurse or Administrator/DPCS reviews services provided to the care plan,
- l. Random consumer contact is made to assess care.
 - The Addus Nurse Case Manager and/or Administrative Personnel contacts the caregiver by phone to review services provided and care received by Home Care Aide,
 - The Nurse and/or Administrative Personnel may call the home when the Home Care Aide is scheduled to visit to verify the Home Care Aide attendance.
- m. Nurse visits each consumer at least every sixty (60) days.
 - The Nurse will assess the care plan and care recipient and home care aide status.

Only those activities allowable under the Respite Care Service Specifications will be included in the plan of care and will be provided by the Home Care Aide. No prohibited activities will be allowed.

Addus will, at a minimum, meet the required time frames outlined above and in the Service Specifications. At times, these may be achieved sooner than required.

Addus will provide Respite services as needed, twenty-four (24) hours a day, seven (7) days a week and three hundred sixty-five (365) days a year. Either an RN or an LPN will complete assessments and reassessments. A licensed Registered Nurse will review, approve and co-sign all assessments/reassessments completed by a LPN.

Backup Coverage: An effective ongoing program of recruitment and the maintenance of a pool of available screened and trained Home Care Aides ensures consistent coverage to all clients at all times. Home Care Aides are notified of the company policy requiring at least three weeks advance notice of vacations and that they must call in before 8:00 a.m. if they are sick. By maintaining a healthy pool of Home Care Aides, we are able to adequately schedule coverage during times when Home Care Aides are on vacation or sick.

Each consumer will be informed of whom to contact if their Aide does not arrive as scheduled. Addus will have the ability to arrange for the services of an alternate Home Care Aide within twenty-four (24) hours. However, when the care recipient is in need of essential services such as meal preparation, these services will be provided within four (4) hours.

If we do not receive adequate notification of Home Care Aide absence, we utilize other staff working in the same areas that have time available within their schedule. If that is not an option, we employ staff for emergency coverage purposes. These individuals do not have regularly assigned clients and work on-call to cover last minute substitutions and emergency referrals. In these instances, the individual is assigned to provide services until the permanent Home Care Aide is able to return.

Our internal MIS system allows us to easily provide a substitute staff when a Home Care Aide has been scheduled to serve a consumer and fails to arrive at the consumer's home due to illness or other reasons.

All consumer and employee records are maintained and stored in a locking file cabinet at our local office. Addus will complete and submit all required documents and meet all required reporting guidelines as stipulated in the contract.

The Addus office is centrally located in Kent County, Delaware at 1675 South State Street, Dover, DE. For the convenience of our clients, staff and contractors we offer a drop site in Wilmington Delaware located at 3521 Silverside Road, Quillen Bldg., Suite 2M. All records are maintained at the primary office in Dover.

We are responsive to our consumers and workers' needs to communicate with our office. The local offices provide support and will have easy access to consumers, workers, DHSS staff and the public. Below is a listing of our current office hours:

Monday through Friday:	<u>8:00 am to 5:00pm</u>
Saturday, Sunday & Holidays:	<u>*Closed</u>

*Field staff available (on call).

On-call staff will be available in the evenings and on weekends. Our office is open and staffed every business day. The local office has a toll-free telephone number in place for use by clients and workers. During non-business hours staff rotates the on-call coordination responsibilities accepting calls from clients and providers. The on call coordinator will contact an on-call nurse who will respond to consumer and worker contacts as the situation requires. Emergencies will be immediately taken by the On-Call Coordinator, twenty-four hours per day, and seven days per week.

The Administrator/Nurse Case Managers, Service Coordinators will be responsible for ensuring that Home Care Aides arrive and depart as agreed upon and that they satisfactorily accomplish the tasks outlined in the care plan. It will be the responsibility of the staff to be aware of changes in caregiver and care recipients service needs and/or circumstances. The situation will be reviewed and the appropriate documentation will follow promptly. ***Our goal is to provide 100% of services to all***

those who are referred for authorized Respite Care. Respite Care utilization according to authorized service units will be closely monitored and reported on monthly.

The agency currently uses a time slip that the consumer must sign daily and at the end of the period to verify all service delivered. The Nurse Supervisor receives these time slips and verifies all the information as well as the consumer's signature. Administrative staff, or a Nurse Supervisor reviews all timesheets for completeness, authenticity and signature of both consumer and Home Care Aide. Any questionable timesheets are re-verified by the Administrative staff, or a Nurse Supervisor and is indicated as such on the timesheet. Administrative staff and Nurse Supervisor make random phone verifications each payroll period to verify timesheet hours. If everything is in order, the time slips will then be used for both payroll and billing purposes. Stringent computer control mechanisms with passwords have been implemented in the office location for computer access to payroll and billing functions for specific authorized personnel. Only personnel authorized by the Regional Director have computer access. Office personnel are placed on a corporate payroll system that generates payroll checks in our National Support Center located in Downers Grove, Illinois (a suburb of Chicago). Billing will also be submitted by our National Support Center for both offices serving all counties. Original bills are also sent to the DSAAPD administrative office by the 15th of the month.

In addition to the internal procedures that help to ensure our ability to provide service in accordance with very specific local standards, Addus has in place a number of internal procedures that assist in our ability to provide caring professional services. Some of these procedures are:

- Internal audits
- Internal branch budgets
- Management planners
- Ongoing assessment of service percentage
- Quality control calls to consumers
- Weekly branch meetings to discuss and resolve concerns
- Close supervision and monitoring from the Regional Director, Agency Director, Supervisors, Director of Patient Care Services, and RN or LPN Supervisors
- Strong, consistent support from the corporate staff
- Timesheet/Telephony verification
- Restricted computer access to payroll/billing functions
- Management of Consumer donation system

Supervision: Addus will provide adequate supervision of Home Care Aides in accordance with the Service specifications from DSAAPD and agency licensing. Addus provides close supervision of all employees providing Respite services. Our Nurses have experience in the provision of services to the elderly and/or disabled and have demonstrated ability to supervise staff and provide consultation related to duties performed by Home Care Aides.

The Nurse Case Manager is responsible for the effective performance of all Home Care Aides. Effective performance includes, but is not limited to:

- Arriving at and leaving the consumer's home when scheduled;
- Satisfactorily accomplishing the tasks outlined in the Service Plan;

- Being aware of changes in the consumer's needs and/or circumstances and reporting these changes promptly to the Case Manager. The Nurse shall provide instructions to the Home Care Aide as needed.

Home Care Aide supervision and performance monitoring will be carried out through:

- Documented telephone contacts with the Caregiver or Care recipient which, at minimum, will be made to new care recipients or those who have a new Home Care Aide within one week of service initiation and, subsequently, on a routine basis.
- The collection of task sheets, one per care recipient per pay period, to verify proper service provision on each service day.
- The routine home visits, Home Care Aide contacts/conferences, and Home Care Aide evaluations.

Periodic tracking of Home Care Aides is also conducted by Administrative Personnel by randomly calling a caregiver's home at the expected start time and/or finish time to ensure that the Home Care Aide is in the consumer's home as scheduled.

Nurse Supervisors make in-home visits, in addition to those required above, on a periodic basis for the purposes of Home Care Aide monitoring, consumer observation, or for training purposes. In all cases, the date, findings, assessment, action, and any other observations or notes from all home visits are documented in the consumer's file and reviewed by the Administrator.

Each Home Care Aide is contacted by his or her supervisor at least monthly to ensure that services are in place and being provided as authorized and also, to discuss the Home Care Aide's progress (success and/or problems) on the job, as well as any needs for additional training. Wherever possible, this contact is face-to-face; however, in some instances, telephone contact may take the place of a face-to-face meeting. In any event, all contacts are documented and entered into the Home Care Aide's personnel file.

At least bi-annually, each Home Care Aide will meet face-to-face with their supervisor for an intensive review of the Home Care Aide's cases. These consumer-centered conferences involve discussion of each client under the Home Care Aide's care, the condition of the care recipient and any observed changes, the relationship the Home Care Aide has with the client, and any problems associated with performing the tasks set forth in the Care Plan.

To maximize the effectiveness of these conferences, the supervisor schedules consumer home visits to correspond with these meetings. This allows for more informed dialogue between the Nurse and the Home Care Aide regarding client observations and the home. The primary purpose of these meetings is to give the supervisor a better understanding of the needs of each caregiver and care recipient and to identify any issues in carrying out the Care Plan. This also provides the Home Care Aide an opportunity to take part in the development of a plan to improve services under his/her care. Individual care service goals are established and monitored at these conferences.

In addition to this formal supervision, informal evaluation of in-home Home Care Aides is ongoing throughout the Home Care Aide's employment. Methods of informal Home Care Aide evaluation

involve the routine contacts between the nurse, the service coordinator and the Administrative staff and the Home Care Aide, as well as conversations with each Home Care Aide's clients. Clients who report dissatisfaction with their services, due to not performance are important indicators of potential issues.

The Regional Director monitors the State Director and/or Administrator/DPCS. The Administrator/DPCS monitors the Nurse Case managers (also referenced as Nurse Supervisors throughout), Service Coordinators. The State Director is responsible for the oversight of the monthly and quarterly financial reports for the State of Delaware.

Condition Changes: Generally the following procedures are in place to report consumer changes:

- The Home Care Aide reports client change to the Addus Nurse or on-call clinical staff
- The Addus Nurse discusses the change with the Service Coordinator
- The Addus Nurse Supervisor also notifies any other agencies involved with service delivery including the DSAAPD Case Manager
- The Addus Nurse will have the capability to implement the change immediately or as soon as the DSAAPD Case Manager authorizes the change
- The Addus Nurse notifies the Home Care Aide of the change and updates the consumer file
- The Addus Nurse updates the Care Plan and sends a copy to the DSAAPD Case Manager

Included in our company policy manual, is a written plan specifying procedures to be followed in case of care recipient becomes ill, is injured, or dies, while on service. Procedures include the completion of an Incident Report Form. The Form includes date of incident, signature of Home Care Aide with the consumer during the incident, a description of the incident, and a detailed description of the action taken by the Home Care Aide. The Home Care Aide must contact the Addus Nurse immediately to assist with the action plan. This policy is reviewed with all staff during orientation and in-service trainings.

Agency's internal program evaluation and monitoring

The Nurse Case Manager and or the Service Coordinator will follow up with the caregiver or care recipient within 5 days of the initial service day. Contact is made to determine the adequacy and appropriateness of services and the consumer's overall satisfaction with both services and the assigned Home Care Aide. The Nurse will again follow up within thirty (30) days. This will allow the consumer and the Home Care Aide a short adjustment period, yet still is soon enough to clear up any problems.

At least quarterly, the quality of services, the caregiver or care recipient's satisfaction with services, and the performance of the Home Care Aide will be determined through a scheduled home visit which may or may not be during the time that the Home Care Aide is in the home. Such visiting may take place on a more frequent basis at the request of the care recipient or his/her caregiver.

Should problems arise which indicate the need for the Nurse Supervisor to make an interim home visit, such will be made at the earliest opportunity. The results of each home visit will be entered as case notes into our Horizon system and will identify any changes, including any professional

recommendations. This information will be shared with DSAAPD Case Manager. A copy will also be maintained in the client file.

To supplement home visits, the Scheduling Coordinator will periodically contact consumers by telephone to ensure ongoing satisfaction with services. A random sampling of consumers will be called monthly and logged accordingly. In addition, at least once per year, a written survey will be sent to all consumers upon which they may report their satisfaction with their services. This will be sent out with return postage guaranteed, and consumers will have the option of identifying themselves or not in responding to the questions. Any identified problems are addressed with the Nurse Supervisor, Service Coordinator, and Administrator/DPCS.

Chart audits are completed on a quarterly basis. Employee files are audited for compliance to all company, state and federal regulations. Annual program evaluation statistics are also monitored for suggestions for improvement.

Through the built-in internal controls described above, we will be able to effectively monitor service quality and consumer satisfaction and thereby achieve our desired outcome. This sequence of activities will provide an efficient, consumer-centered framework for the provision of services.

Performance Evaluations

Supervisors conduct a formal, documented evaluation of each employee within the first three months of employment, and annually thereafter, relative to his/her ability to perform assigned tasks, reliability, ability to cooperate with consumers and the supervisors, and total job performance. Such evaluations are conducted face-to-face and documented in writing. The employee and supervisor both sign and date the evaluation following review. Any employee receiving an unsatisfactory evaluation is notified in writing of the reasons for such and the corrective action necessary to remedy the situation. The State Director and Regional Directors review evaluations.



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Services for Aging and Adults with Physical Disabilities

Contract No. 35-1400-2017-66

CATS Sys Doc ID: 018794-0002-0000

PROFESSIONAL SERVICES AGREEMENT For RESPIRE CARE SERVICES

This Professional Services Agreement ("Agreement") is entered into as of October 1, 2016 and will end on September 30, 2017, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults with Physical Disabilities ("Delaware"), and CHEER, Inc. (the "Vendor"), with offices at 546 S. Bedford Street, Georgetown, DE 19947.

WHEREAS, Delaware desires to obtain certain services for: Respite Care Services.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof, including Appendix A, Divisional Requirements; Appendix B, HIPPA Business Associate Agreement; Appendix E, Policy Manual for Contracts; and, the other appendices, as referenced.
- 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 proposal, **HSS-14-001**, attached hereto as Appendix F; and (c) Vendor's response to the request for proposal, attached hereto as Appendices D, Budget and G, Work Plan. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

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

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from October 1, 2016 through September 30, 2017.
- 2.2. Delaware will pay Vendor for the performance of services described in Appendix C, Service Specifications. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D, Contract Budget.
- 2.3. Delaware's obligation to pay Vendor for the performance of services described in Appendix G, Work Plan, will not exceed the fixed fee amount of **\$179,965**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4. 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 **35-1400-2017-66** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.5. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.6. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.7. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.8. 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.

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

2.10. Invoices shall be submitted to: william.abernathy@state.de.us, or as directed.

3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager.
- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

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

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:

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

Vendor shall return any original data provided by Delaware.

- 5.6. Delaware shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.
- 5.7. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

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

- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

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

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

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

10. Employees.

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

11. Independent Contractor.

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

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

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

12. Dispute Resolution.

12.1. At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

13. Suspension.

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

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

14. Termination.

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

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

14.2. 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 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

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

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

14.4. 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.

14.5. 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.

14.6. Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.

- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. 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.

16. Assignment; Subcontracts.

- 16.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- 16.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 16.3. 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.
- 16.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- 16.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

17. Force Majeure.

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

18. Non-Appropriation of Funds.

- 18.1. 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.
- 18.2. 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.

19. State of Delaware Business License.

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

20. Complete Agreement.

20.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

20.2. 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.

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

21. Miscellaneous Provisions.

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

21.2. 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.

21.3. 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.

21.4. 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.

21.5. 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.

- 21.6. 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.
- 21.7. 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.
- 21.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* ' 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22. Insurance.

22.1. 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.
- b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. As applicable and determined necessary by the State, the Vendor shall also maintain:

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. 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 as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

22.4. 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:

**Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy.
New Castle, DE. 19720**

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

23. 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.

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 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:

DELAWARE:
**Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building Annex – Room 107
New Castle, DE. 19720
Attn: Contract Manager**

VENDOR:
**CHEER, Inc.
546 S. Bedford Street
Georgetown, DE 19947**

Contract No. 35-1400-2017-66
CATS Sys Doc ID: 018794-0002-0000

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 State of Delaware:
Division of Services for Aging & Adults with
Physical Disabilities (DSAAPD)

Original On File

Original On File

Witness

Deputy

~~Lisa Bond~~ *Albert Conforti*
Director, DSAAPD

8-4-16

Date

For the Contractor:
CHEER, Inc.

Original On File

Original On File

Witness

Kenneth S. Bock, MPA
Executive Director, CHEER, Inc.

8/1/2016

Date

APPENDIX A: *Divisional Requirements*

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Sanctions – Revised 6/22/16

The Division reserves the right to reduce the number of people a Contractor currently serves, restrict the number of referrals a Contractor may receive, or rescind authorization to operate one or more service sites (e.g., neighborhood home, apartment) or any combination of such measures as sanctions for documented unsatisfactory contract performance as determined by the Division. The Division may impose such sanctions for a period of between 30 to 365 days, with the right to renew the sanctions at the Division's sole discretion.

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.
7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. 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 lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.

10. The contractor acknowledges that no state or federal funds may be requested unless the contractor has the local resources to meet the required match, if applicable. These resources may not be used as match for any other program. Failure of any contractor to document and provide the budgeted required match could result in an audit finding and the funds returned to the Division.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 13 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.
17. The contractor of an Older Americans Act program acknowledges that the total cost of the contract, excluding program income, must include a 10% match of non-DSAAPD resources (e.g. local cash and/or in-kind that is provided by the contractor). Any budget items - including salaries and/or fringe benefits - used for the match must not be from Federal or State Funds and must not be used as a match for another program. During the year-end closeout, the contractor will refund all unmatched DSAAPD funds as required by Federal regulations.

APPENDIX B: *HIPPA Business Associate Agreement*

APPENDIX B: *HIPPA Business Associate Agreement*

RECITALS

WHEREAS, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the “Agreement”) which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate (“CE Affiliate”) that involve the use or disclosure of Protected Health Information (“PHI”) that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the “HIPAA Rules”) issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as “HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), as each is amended from time to time. The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI.

WHEREAS, Business Associate provides Respite Care Services for Covered Entity pursuant to a contract dated October 1, 2016 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information (“PHI”) to Business Associate (collectively, the “Master Agreement”);

WHEREAS, Business Associate, in the course of providing services to Covered Entity, may have access to PHI and may be deemed a business associate for certain purposes under HIPAA;

WHEREAS, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity’s knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

WHEREAS, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate’s obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

NOW, THEREFORE, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.

2. **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:

(a) **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.

(b) **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:

- (i) use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;
 - (ii) use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
 - (iii) de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.
- (c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.
- (d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.
 - (i) To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.
 - (ii) The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.
 - (iii) Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.
- (e) **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.

(f) **Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.

(i) In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.

(ii) Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.

(ii) Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

(g) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.

(h) **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

(i) **Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. §164.528 and any subsequent regulations issued thereunder. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.

(j) **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:

(i) for Covered Entity to comply with its access obligations in accordance with 45 C.F.R. §164.524 and any subsequent regulations issued thereunder; and

(ii) for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R. §164.526 and any subsequent guidance.

(k) **HITECH Compliance Dates.** Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.

3. **Obligations of Covered Entity.**

(a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, including disclosure of data to insurers and health plans when the patient pays for medical services in full and requests that such notification not be made, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(d) Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

4. **Term and Termination.**

(a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.

(b) **Termination Upon Breach.**

(i) Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Master Agreement.

(c) **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.

(d) **Effect of Termination.**

(i) To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

(ii) If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate

agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

(iii) Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

5. **Miscellaneous.**

(a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

(c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

(d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

(e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

(f) **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

(g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Covered Entity to comply with HIPAA and any subsequent guidance.

(h) **No Third Party Rights.** Except as stated herein, the terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities

whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.

(i) Applicable Law. This BAA shall be governed under the laws of the State of Delaware, without regard to choice of law principles, and the Delaware courts shall have sole and exclusive jurisdiction over any dispute arising under this Agreement.

(j) Judicial and Administrative Proceedings. In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.

(k) Transmitting Electronic PHI. Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 42 C.F.R. § 164.402.

6. **IN WITNESS WHEREOF**, the Parties hereto have executed this BAA to be effective on the date set forth above.

~~Covered Entity~~
Original On File

By: LS
Name: Lisa Bond
Title: Director, DSAAPD
Date: 8-4-16

Original On File

By: _____
Name: Kenneth S. Bock, MPA
Title: Executive Director, CHEER, Inc.
Date: 8/1/2016

APPENDIX C: *Service Specifications*



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

Revision Table

Revision Date	Sections Revised	Description
11/26/13		Original
12/18/13	6.1.6.1	Deleted: <i>The agency must complete a caregiver and care recipient assessment form as provided by DSAAPD.</i>
7/7/16	6.1.10- 6.1.12;; 6.1.11.1, 6.1.11.2	Added requirements that agency must notify CSP when services are cancelled.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

1.0 SERVICE DEFINITION

- 1.1 Respite care provides short-term relief to caregivers who support the needs of older persons; persons with Alzheimer's disease or related dementias; or adults with physical disabilities. Respite care is provided in the home of the care recipient or caregiver and can be provided in the absence of the caregiver or while the caregiver remains in the home.

2.0 SERVICE GOAL

- 2.1 The goal of respite care is to provide a caregiver with relief from the demands of caregiving. The intent is to maintain the caregiver's health and well-being; reduce stress, and prevent exhaustion while ensuring continuous care for the care recipient.

3.0 SERVICE UNIT

- 3.1 The unit of service for respite care is one hour.

4.0 SERVICE AREA

- 4.1 Respite care is available to all eligible persons within Delaware subject to availability of the service.
- 4.2 Providers may apply for sub-areas of the State.

5.0 ELIGIBILITY

- 5.1 DSAAPD staff will determine eligibility for respite care and authorize service hours.
- 5.2 In order to qualify for the service, a care recipient must:
 - 5.2.1 Be a resident of the State of Delaware.
 - 5.2.2 Be unable to perform at least two activities of daily living (ADL's) (basic activities such as eating, bathing, dressing, toileting, and mobility) without substantial human assistance or be in need of substantial assistance because of behavior that poses a serious safety risk.
 - 5.2.3 Currently receive substantial in-home care from a caregiver.
 - 5.2.4 Fall within one or more of the following eligibility groups:
 - 5.2.4.1 Person aged 60 or over.
 - 5.2.4.2 Person of any age with Alzheimer's disease or related dementia.
 - 5.2.4.3 Person aged 18 or over with a physical disability.
- 5.3 DSAAPD staff will apply additional eligibility and/or targeting criteria based on requirements of the service funding source(s), as appropriate.
- 5.4 DSAAPD will establish service caps based on available funds. Respite service hours may be authorized by DSAAPD staff above established caps in cases of emergency or extreme need.

6.0 SERVICE STANDARDS

- 6.1 Respite services must meet or exceed the following standards:
 - 6.1.1 The provider must meet and comply with all Federal, State and local rules, regulations and standards applying to the service being provided.
 - 6.1.2 The provider must be a Delaware-licensed home health agency or personal assistance services agency.
 - 6.1.3 The provider must be able and willing to provide respite care seven (7) days a week with extended hours as needed.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

- 6.1.4 Provider staff must be fully trained and professionally qualified in accordance with applicable licensing requirements with supplemental training provided, as appropriate, to support the provision of care to the population served through this program.
 - 6.1.5 The provider must maintain, follow, and continually update a training and supervision program to ensure that respite staff is fully trained and familiar with agency procedures.
 - 6.1.6 In-home case assessments must be completed within five (5) working days of receipt of the service referral from DSAAPD.
 - 6.1.7 A plan of care must be developed for each new care recipient within five working days after assessment.
 - 6.1.7.1 The plan must identify those services to be provided to the care recipient to relieve the caregiver.
 - 6.1.7.2 The caregiver must play an integral role in the development of the plan to ensure that the hours and services provided meet his/her needs and the needs of the care recipient.
 - 6.1.8 Assessments, plans of care and other service records must be kept in a secure location to protect confidentiality.
 - 6.1.9 The provider must coordinate with DSAAPD on the maintenance and submission of needed service-related data.
 - 6.1.10 The provider must notify DSAAPD of problems which threaten consumer service.
 - 6.1.11 The provider must notify DSAAPD and the consumer in writing two weeks prior to termination of services to any one consumer.
 - 6.1.11.1 The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
 - 6.1.11.2 The notification must include the proposed plan of care that will be provided during the two week period.
 - 6.1.12 The provider must give DSAAPD thirty days' notice if terminating five or more consumers at a given time.
- 6.2 Allowable activities:
- 6.2.1 The agency must have the capacity to provide, at a minimum, the following service components based on the care recipient's individualized care plan:
 - 6.2.1.1 Household duties such as light cleaning, laundry and meal preparation.
 - 6.2.1.2 Personal care services for the care recipient such as bathing, shampooing, shaving, dressing and toileting.
 - 6.2.1.3 Companionship.
 - 6.2.1.4 Training / Instruction / Cueing.
- 6.3 Prohibited activities:
- 6.3.1 For purposes of planning and reimbursement, respite care may not include any of the following:
 - 6.3.1.1 Lawn care, garden care, raking or snow removal.
 - 6.3.1.2 Heavy-duty cleaning, furniture moving, or other heavy work.
 - 6.3.1.3 Financial or legal advice or services (except for referral to qualified agencies or programs).



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

7.0 INVOICING REQUIREMENTS

- 7.1 The provider will invoice DSAAPD pursuant to the DSAAPD Policy Manual for Contracts, Policy Log Number X-Q, Invoicing, utilizing the DSAAPD provided Invoicing Workbook for the Respite Care service (IW-017 & IW-018).

8.0 CONTRIBUTIONS

- 8.1 DSAAPD staff will inform care recipients, family members, and/or caregivers of the cost of providing respite service and will offer them the opportunity to make voluntary contributions to help defray the cost, thereby making additional service available to others.
- 8.1.1 DSAAPD staff will, with the care recipient and/or caregiver, determine the recommended contribution amount per unit of service. The amount will be documented by DSAAPD on the service referral form.
- 8.2 Providers must have procedures in place to:
- 8.2.1 Protect privacy and confidentiality with respect to contributions.
- 8.2.2 Safeguard and account for all contributions.
- 8.2.3 Use the contributions to expand services.
- 8.3 No eligible participant will be denied service because of his/her inability or failure to make a contribution.

APPENDIX D: *Budget*

Unit Cost In-Kind Match Breakdown

Agency: CHEER, Inc.
 Program/Service: Respite Care Services
 Contract Period: October 1, 2016 - September 30, 2017

Unit Cost Breakdown	Unit Cost Total
Staff Salaries	\$16.70
Fringe Benefits	\$5.33
Travel & Training	
Travel (Mileage x .40 per mile)	\$1.47
Training	\$0.06
Contractual	
Rent	\$0.27
Electricity	\$0.16
Heat/Other Utilities	\$0.00
Phone/Internet/Media/Postage	\$0.26
Insurance	\$0.25
Repairs/Maintenance	\$0.22
Supplies	\$0.68
Other: Identify (ID) in Methodology	\$1.12
Equip/Other: ID in Methodology	\$0.00
Indirect/Other: ID in Methodology	\$0.00
Total Unit Cost	\$26.52

Methodology of Unit Cost Breakdown

All salaries are calculated based on the amount of time spent on a project/service CHEER has added additional Full Time Direct Care Workers with benefits and continues to hire new part time Direct Care Workers to fill new cases. Approx. 1% increase in rate.

FICA/Medicare is calculated at 7.65%, Workers Comp rates are 8.6% for Aides, 2.5% YMCA and .37% for Office, Health insurance is 11.6% (merged rate), Pension is 5% for participants, Life Insur/Unemp is 2.1%. Health insurance costs are expected to increase by up to 10% this fiscal year and participation among new hires is increasing for elected benefits. +1% in rate.

The Direct Care Workers are reimbursed on a per trip basis. This rate is adjusted periodically based on fuel costs. Fuel costs greatly affect our DCW's finances due to their providing their own transportation to and from client's homes. The trip reimbursement is meant to assist them by offsetting some of the expense of operating their own vehicle.

Training is provided by both on site staff and outside resources. Costs include a minimal cost for room rental/refreshments, and materials/outside trainers. Costs are allocated based on time spent on each project.

Office space, equipment and document storage space. These costs are calculated based on actual expenses and allocated by the amount of time spent on each contract. <+.3% in rate

Utility Cost allocated by time spent on each contract. (This is a reduction from last year.) .2% decrease to rate

Telephone/internet/cable/postage costs allocated by time spent on each contract.

Liability, property and auto insurance allocated by time spent on each contract.

Repairs and maintenance costs allocated by time spent on each contract.

Supply costs allocated by time spent on each project. .2% increase to rate

Printing/Advertising/Equipment leasing/Fees and other contracted services allocated by time spent on each project. .1% increase to rate

Note: the unit rate is up by \$0.64 from FY16 to FY17 (from \$25.88 to \$26.52), a 2.5% increase of which 2% (\$0.50/hr) represents a modest wage increase for employees and the cost of benefits/taxes. And, .5% (\$0.14/hr) is due to fluctuations in contractual expenses.

Agency:	CHEER, Inc.
Program/Service:	Respite Care Services
Contract Year:	October 1, 2016 - September 30, 2017

A.	Provider Unit Cost	\$26.52
B.	Planned Service Units - Contract Year	
C.	Total Resources Needed	
a.	DSAAPD Resources Needed	\$0

A.	Provider Unit Cost	\$26.52
B.	Planned Service Units	6,786
C.	Total Resources Needed:	
a.	OAA/Title III Required Match	\$19,996
b.	DSAAPD Resources Needed	\$179,965
	DSAAPD Funding Required	\$179,965
	Contract Value with Required Match	\$199,961

[illegible][illegible]

TOTAL AMOUNT OF LOCAL CASH / IN-KIND	\$19,996
MATCH NEEDED	\$19,996

[illegible]

Contract Period: October 1, 2016 - September 30, 2017

APPENDIX E: *DSAAPD Policy Manual for Contracts*
(Included by Reference)

Link to DSAAPD Policy Manual for Contracts:

http://dhss.delaware.gov/dhss/dsaapd/files/dsaapd_provider_manual.pdf

APPENDIX F: *Request for Proposal*

Included by Reference: ***HSS 14-001***

APPENDIX G: *Work Plan*

Provider Work Plan for Respite Care Services

Provider Name:	CHEER, Inc.
Contract Year:	Current Year

SERVICE AREA

Providers are to specify the Service Area of which they will provide Respite Care service for the contract year indicated: (i.e. STATEWIDE; or, NEW CASTLE, KENT, and/or SUSSEX, as appropriate)

Sussex County and the Kent County side of Milford, Greenwood and Houston (Zip codes 19950, 19954 and 19963 only in Kent County)

For situations where an agency is providing service in only SUB-AREAS of a County; please indicate **ALL ZIP codes** that the provider **DOES NOT** accept Respite Care referrals for that particular County under their current Work Plan:

ZIP CODES

New Castle County	ALL
Kent County	19901,19902,19903,19904,19905,19906,19934,19936,19938,19943,19946,19952 19953, 19955,19961,19964,19977,19979,19980
Sussex County	

WORK PLAN / LICENSURE

Please describe any consumer needs that your agency **cannot** accept under your current Work Plan or State Licensure:

CHEER Personal Assistance Services cannot provide care to any individual who may require skilled medical or psychological care. Any persons who may pose a physical threat that may include, but is not limited to: a) a history of violence; b) any aggressive or sexual physical contact or displays; or, c) lewd, vulgar or hostile actions toward another. Any persons who does not show evidence of having sufficient balance while assistance with a transfer is needed. Any person who may be a high risk of choking that could potentially result in the need for emergency measures.

Respite Services: effective June 15, 2016

SERVICE DEFINITION

CHEER Personal Assistance Services Respite program provides in-home services by trained and qualified personnel who are supervised to insure the highest quality services to every customer. Respite services include meal preparation, light housekeeping, light laundry service, personal care services including bathing, shampooing, shaving, dressing and toileting, as well as companionship and other routine duties that facilitate the maximum functioning and independence of customers within the familiar surroundings of their own homes. Service is available seven days a week.

SERVICE GOAL

CHEER's goal for this program is to provide caregivers the opportunity for temporary relief from the mental stress and physical demands of caring for a loved one while assuring continuous care for an infirmed person. These services help to enable individuals to maximize their health, independence, dignity, social networks and quality of life through the ability to continue to live safely in their own homes. CHEER will provide service under this program through its Personal Assistance Services (PASA) division in a cost effective and customer responsive manner.

SERVICE UNIT

CHEER will assess charges for respite services based upon a pre-established hourly rate for each hour of service provided, with a two-hour minimum per customer visit. Incremental charges will be billed at rates in accordance with the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) service specification in place at the time this service contract is awarded. Service units will be managed by CHEER to remain within the limits of available program funding

SERVICE AREA

CHEER will provide regular and routine respite services in the private residences of eligible clients throughout Sussex County Delaware.

SERVICE ELIGIBILITY

CHEER PASA division will provide regular and routine respite services to eligible recipients as determined by DSAAPD staff as set forth within Sections 5.0 – 5.4 of the Respite Service Specifications not to exceed the authorized units of service designated on each recipient's Service Referral Form.

SERVICE LOCATION

CHEER's Personal Assistance Services Program's main office is centrally located in the Warren L. and Charles C. Allen, Jr. Community Center at 20520 Sand Hill Road, Georgetown, Delaware 19947. Personal Assistance Services supervisory, and Technology staff is housed at the Sand Hill Road location. Office Hours are Monday through Friday (excluding holidays) from 8:00 AM until 4:30 PM. CHEER Personal Assistance Services program staff provides round-the-clock, live telephone response coverage for all non-office hours on a 24 hour per day, 7 day per week basis. CHEER's

administrative and support staff is located at 546 S. Bedford Street, Georgetown, Delaware. Finance, Human Resources, and Volunteer Services staff is all located in the S. Bedford Street facility.

By their nature, respite services will be provided in the homes of eligible customers. Every effort will be made to respect the privacy and confidentiality of the customer and all other members of the household.

TIME FRAMES TO ACCOMPLISH WORK PLANS

Resources allocated to CHEER through this program will be completely utilized within the same fiscal year that the resources are allocated. CHEER will strive to utilize these resources in a uniform manner that provides for a consistent service level throughout the year. CHEER will also notify DSAAPD personnel any time that CHEER may become aware the service demand levels may exceed a monthly pro-rata share of available funding. CHEER will maintain the program within the monthly pro-rate approved funding level.

MEETING SERVICE STANDARDS

CHEER Personal Assistance services program staff consist of a Program Director, Assistant Program Director, two placement coordinators and approximately 75 full and part-time Direct Care Workers. . The number of direct care staff fluctuates as service demand levels warrant. Recognized formal training and certification is supplemented with regular in-service training and situation specific, focused training pertaining to either the customer, or some aspect of the customer's care. Beyond initial training at orientation, further staff training needs are identified by administrative staff through pre-employment testing and on-going supervision of employee work performance. Additional direct care staff will be recruited as needed to supplement staffing levels as may be needed to support funded service demand levels. CHEER's Human Resources staff conducts regular recruitment efforts for direct care staff in support of Personal Assistance Services staffing needs. Traditional recruitment activities include classified newspaper advertisements, postings and direct contact with educational institutions and attendance of job fairs. CHEER has established relationships with local educational institutions to help CHEER identify and select the best possible newly graduated candidates for vacancies. Within the past year CHEER has also began conducting job fairs within our facilities throughout the county as a successful means of recruiting new Direct Care Workers. Potential candidates receive a background check as part of the initial pre-employment evaluation process. Pre-employment drug screening, as well as routine TB screening is performed for all direct care service. CHEER Personal Assistance Services administrative and Direct Care staff verify that staff members have no physical or mental health conditions that may adversely affect the customer or any aspect of the service to that customer.

To insure compliance with all relevant regulations, all professional and administrative CHEER Personal Assistance Services' staff members receive specific instruction with

regard to Service Standards. The entire organization and its professional staff are dedicated to insuring CHEER's full and continued compliance with all Federal, State, and local rules, regulations, and standards while providing the highest quality service in a cost effective manner. The CHEER Personal Assistance Services Program Director will comply with all requests for program information and cooperate with designated State of Delaware Auditors and all other officials properly authorized by the DSAAPD in order to verify program compliance. CHEER's Finance Department will also comply with all requests for program information from DSAAPD designated auditors.

The CHEER Personal Assistance Services staff is supported by professional administrative staff including the organization's senior management, financial personnel, technology and volunteer services.

The Personal Assistance Services staff will accomplish case assessments within five working days of a service referral from DSAAPD and conduct regular client visits no less than once every 90 days. An Individualized Service Plan will be developed, in collaboration with caregiver(s) and the customer, during the initial visit, and the plan will be reviewed at each assessment thereafter. Revisions may be made as appropriate to accommodate the customer's needs. If a customer's situation or needs indicate that a change may have occurred with the customer, CHEER will have the Program Manager or their trained designee reassess the customer and the appropriateness of the service plan.

As part of the customer intake process to open a new case, each new customer will be provided with an explanation of his/her opportunities to contribute donations to this program and the benefit those donations provide for others in need of services. The explanation of the opportunity and uses of donations will be provided in advance of the provision of services.

Customer information will be kept in secure storage assuring limited access to only those individuals with a qualified and legitimate right to access that information. Respect for customer privacy and confidentiality will be paramount. Information will not be released or otherwise disclosed without the appropriate written consent of the customer or customers' legal guardian except as may be compelled by a legally authorized government entity.

INVOICING AND REPORTING REQUIREMENTS

CHEER will utilize the DSAAPD provided Invoicing Workbook and will invoice DSAAPD pursuant to its Policy Manual for Contracts. Quarterly Program and Financial reports will be completed accurately and submitted in a timely manner as set forth in the DSAAPD Policy Manual. In addition, a Usage Report will be completed and submitted as required.

INTERNAL PROGRAM EVALUATION & MONITORING

CHEER's Chief Operating Officer, Personal Assistance Services' Program Director, and Senior Accountant monitor service and resource levels on a bi-weekly basis to insure that all resources are utilized in a manner that provides a uniform service level throughout the program year. Formal internal monitoring reports are issued and reviewed bi-weekly. All activities will be conducted in a manner consistent with guidance issued by DSAAPD and may be supplemented by CHEER's own internal controls and procedures.

Service quality will be evaluated based upon customer input. An annual survey of all registered customers is conducted for this purpose and statistical measures of customer satisfaction in several service areas will be developed. These measures are used to identify current satisfaction levels as well as to provide a basis for trend analysis over future years. In addition to the formalized annual survey effort, customer input is formally solicited and documented during periodic in-home visits. Service comments can also be received electronically through our website and well as via telephone. These are promptly acknowledged and responses are issued as warranted. The Program Director and / or CHEER senior management may make service refinements or policy changes based upon customer input.

CHEER Personal Assistance Service's Program Director has the initial responsibility for overseeing these activities and insuring CHEER's continued compliance with all DSAAPD regulations and guidance. The Program Director will meet or otherwise communicate with all DSAAPD personnel, including program management, administrative and fiscal control personnel as appropriate to insure CHEER's full compliance with all program requirements.

CHEER's Personal Assistance Services Program Director is assisted and supported in these duties by other members of CHEER's staff including the:

- finance staff which maintains financial records and prepares reports,
- human resources staff which recruits qualified staff, verifies qualifications and arranges or conducts initial and ongoing employee training
- technology staff which supports automated hardware, software and communications systems,
- volunteer coordinator who recruits and assists with the prequalification and training of volunteers to help support CHEER's mission
- marketing staff with educates CHEER's service area population and promotes services, and
- administrative staff which assist with management duties and clerical support

CHEER's Personal Assistance Services' Program Director also monitors employee records to insure that each employee used in the service continues to maintain all required credentials and qualifications in a manner consistent with CHEER policy and is in compliance with DSAAPD service specifications.

VOLUNTEERS

CHEER maintains an on-going volunteer recruiting program. Volunteers are recruited with the assistance of CHEER's Volunteer Coordinator and many other staff members are regularly involved in this effort. Volunteers comprise an essential element of CHEER's services and help to extend limited resources and expand services. Volunteer utilization is based upon volunteer interests, capability, qualifications and availability. Utilization may include, but not be limited to, marketing, administrative duties, transportation, recruitment and retention.

All services will be provided, conducted and otherwise operated in a manner consistent and compliant with the Division of Service for Aging and Adults with Physical Disabilities' Respite Service Specifications in effect at the time a contract for services is executed.



Contract No. 35-1400-2017-65

CATS Sys Doc ID: 018806-0002-0000

**PROFESSIONAL SERVICES AGREEMENT
For
RESPIRE CARE SERVICES**

This Professional Services Agreement ("Agreement") is entered into as of October 1, 2016 and will end on September 30, 2017, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults with Physical Disabilities ("Delaware"), and Christiana Care Home Health & Community Services, Inc. (the "Vendor"), with offices at One Reads Way, Suite 100, New Castle Corporate Commons, New Castle, DE 19720.

WHEREAS, Delaware desires to obtain certain services for: Respite Care Services.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof, including Appendix A, Divisional Requirements; Appendix B, HIPPA Business Associate Agreement; Appendix E, Policy Manual for Contracts; and, the other appendices, as referenced.
- 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 proposal, **HSS-14-001**, attached hereto as Appendix F; and (c) Vendor's response to the request for proposal, attached hereto as Appendices D, Budget and G, Work Plan. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

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

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from October 1, 2016 through September 30, 2017.
- 2.2. Delaware will pay Vendor for the performance of services described in Appendix C, Service Specifications. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D, Contract Budget.
- 2.3. Delaware's obligation to pay Vendor for the performance of services described in Appendix G, Work Plan, will not exceed the fixed fee amount of **\$379,913**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4. 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 **35-1400-2017-65** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.5. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.6. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.7. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

- 2.8. 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.
- 2.9. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- 2.10. Invoices shall be submitted to: william.abernathy@state.de.us, or as directed.

3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager.
- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause,

Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

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

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do

not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:

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

Vendor shall return any original data provided by Delaware.

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

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

5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

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

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

6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any

ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

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

- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
- e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

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

10. Employees.

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

11. Independent Contractor.

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

insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

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

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

12. Dispute Resolution.

12.1. At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

13. Suspension.

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

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

suspension of performance by Delaware based on appropriated funds and approval by Delaware.

14. Termination.

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

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

14.2. 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 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

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

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

14.4. 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.

14.5. 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.

14.6. Gratuities.

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

- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. 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.

16. Assignment; Subcontracts.

- 16.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- 16.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 16.3. 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.
- 16.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- 16.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

17. Force Majeure.

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

18. Non-Appropriation of Funds.

- 18.1. 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.
- 18.2. 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.

19. State of Delaware Business License.

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

20. Complete Agreement.

- 20.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 20.2. 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.
- 20.3. Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

21. Miscellaneous Provisions.

- 21.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 21.2. 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.
- 21.3. 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.
- 21.4. 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.

- 21.5. 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.
- 21.6. 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.
- 21.7. 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.
- 21.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22. Insurance.

22.1. 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.
- b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. As applicable and determined necessary by the State, the Vendor shall also maintain:

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. 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 as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

22.4. 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:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy.
New Castle, DE. 19720

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

23. 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.

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 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:

DELAWARE:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building Annex – Room 107
New Castle, DE. 19720
Attn: Contract Manager

VENDOR:

Christiana Care Home Health & Community Services, Inc.
One Reads Way, Suite 100
New Castle Corporate Commons
New Castle, DE 19720

Contract No. 35-1400-2017-65
CATS Sys Doc ID: 018806-0002-0000

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

Original On File

For the State of Delaware:
Division of Services for Aging & Adults with
Physical Disabilities (DSAAPD)

Original On File

Witness

for Lisa Bond
Director, DSAAPD

8-10-16
Date

For the Contractor:
Christiana Care Home Health & Community
Services, Inc.

Original On File

Original On File

Witness

Name
Senior Vice President
Title
8/5/16
Date

APPENDIX A: *Divisional Requirements*

APPENDIX A: Divisional Requirements

Sanctions – Revised 6/22/16

The Division reserves the right to reduce the number of people a Contractor currently serves, restrict the number of referrals a Contractor may receive, or rescind authorization to operate one or more service sites (e.g., neighborhood home, apartment) or any combination of such measures as sanctions for documented unsatisfactory contract performance as determined by the Division. The Division may impose such sanctions for a period of between 30 to 365 days, with the right to renew the sanctions at the Division's sole discretion.

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.
7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. 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 lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.

10. The contractor acknowledges that no state or federal funds may be requested unless the contractor has the local resources to meet the required match, if applicable. These resources may not be used as match for any other program. Failure of any contractor to document and provide the budgeted required match could result in an audit finding and the funds returned to the Division.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 13 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.
17. The contractor of an Older Americans Act program acknowledges that the total cost of the contract, excluding program income, must include a 10% match of non-DSAAPD resources (e.g. local cash and/or in-kind that is provided by the contractor). Any budget items - including salaries and/or fringe benefits - used for the match must not be from Federal or State Funds and must not be used as a match for another program. During the year-end closeout, the contractor will refund all unmatched DSAAPD funds as required by Federal regulations.

APPENDIX B: *HIPPA Business Associate Agreement*

APPENDIX B: HIPPA Business Associate Agreement

RECITALS

WHEREAS, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the “Agreement”) which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate (“CE Affiliate”) that involve the use or disclosure of Protected Health Information (“PHI”) that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the “HIPAA Rules”) issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as “HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), as each is amended from time to time. The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI.

WHEREAS, Business Associate provides Respite Care Services for Covered Entity pursuant to a contract dated October 1, 2016 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information (“PHI”) to Business Associate (collectively, the “Master Agreement”);

WHEREAS, Business Associate, in the course of providing services to Covered Entity, may have access to PHI and may be deemed a business associate for certain purposes under HIPAA;

WHEREAS, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity’s knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

WHEREAS, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate’s obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

NOW, THEREFORE, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.

2. **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:

(a) **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.

(b) **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:

(i) use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;

(ii) use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and

(iii) de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.

(c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.

(d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.

(i) To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.

(ii) The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.

(iii) Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.

(e) **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.

(f) **Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.

(i) In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.

(ii) Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.

(ii) Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

(g) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.

(h) **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

(i) **Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. §164.528 and any subsequent regulations issued thereunder. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.

(j) **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:

(i) for Covered Entity to comply with its access obligations in accordance with 45 C.F.R. §164.524 and any subsequent regulations issued thereunder; and

(ii) for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R. §164.526 and any subsequent guidance.

(k) **HITECH Compliance Dates.** Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.

3. **Obligations of Covered Entity.**

- (a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, including disclosure of data to insurers and health plans when the patient pays for medical services in full and requests that such notification not be made, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (c) Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

4. **Term and Termination.**

- (a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.

- (b) **Termination Upon Breach.**

- (i) Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Master Agreement.

- (c) **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.

- (d) **Effect of Termination.**

- (i) To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

- (ii) If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate

agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

(iii) Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

5. Miscellaneous.

(a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

(c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

(d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

(e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

(f) **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

(g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Covered Entity to comply with HIPAA and any subsequent guidance.

(h) **No Third Party Rights.** Except as stated herein, the terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities

whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.


(i) Applicable Law. This BAA shall be governed under the laws of the State of Delaware, without regard to choice of law principles, and the Delaware courts shall have sole and exclusive jurisdiction over any dispute arising under this Agreement.

(j) Judicial and Administrative Proceedings. In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.

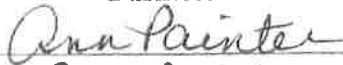
(k) Transmitting Electronic PHI. Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 42 C.F.R. § 164.402.

6. **IN WITNESS WHEREOF**, the Parties hereto have executed this BAA to be effective on the date set forth above.

Covered Entity

By: 
for Name: Lisa Bond
Title: Director, DSAAPD
Date: 8-10-16

Business Associate

By: 
Name: Ann Painter
Title: Senior Vice President
Date: 8/5/16

APPENDIX C: *Service Specifications*



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

Revision Table

Revision Date	Sections Revised	Description
11/26/13		Original
12/18/13	6.1.6.1	<i>Deleted: The agency must complete a caregiver and care recipient assessment form as provided by DSAAPD.</i>
7/7/16	6.1.10- 6.1.12;; 6.1.11.1, 6.1.11.2	Added requirements that agency must notify CSP when services are cancelled.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

1.0 SERVICE DEFINITION

- 1.1 Respite care provides short-term relief to caregivers who support the needs of older persons; persons with Alzheimer's disease or related dementias; or adults with physical disabilities. Respite care is provided in the home of the care recipient or caregiver and can be provided in the absence of the caregiver or while the caregiver remains in the home.

2.0 SERVICE GOAL

- 2.1 The goal of respite care is to provide a caregiver with relief from the demands of caregiving. The intent is to maintain the caregiver's health and well-being; reduce stress, and prevent exhaustion while ensuring continuous care for the care recipient.

3.0 SERVICE UNIT

- 3.1 The unit of service for respite care is one hour.

4.0 SERVICE AREA

- 4.1 Respite care is available to all eligible persons within Delaware subject to availability of the service.
- 4.2 Providers may apply for sub-areas of the State.

5.0 ELIGIBILITY

- 5.1 DSAAPD staff will determine eligibility for respite care and authorize service hours.
- 5.2 In order to qualify for the service, a care recipient must:
- 5.2.1 Be a resident of the State of Delaware.
 - 5.2.2 Be unable to perform at least two activities of daily living (ADL's) (basic activities such as eating, bathing, dressing, toileting, and mobility) without substantial human assistance or be in need of substantial assistance because of behavior that poses a serious safety risk.
 - 5.2.3 Currently receive substantial in-home care from a caregiver.
 - 5.2.4 Fall within one or more of the following eligibility groups:
 - 5.2.4.1 Person aged 60 or over.
 - 5.2.4.2 Person of any age with Alzheimer's disease or related dementia.
 - 5.2.4.3 Person aged 18 or over with a physical disability.
- 5.3 DSAAPD staff will apply additional eligibility and/or targeting criteria based on requirements of the service funding source(s), as appropriate.
- 5.4 DSAAPD will establish service caps based on available funds. Respite service hours may be authorized by DSAAPD staff above established caps in cases of emergency or extreme need.

6.0 SERVICE STANDARDS

- 6.1 Respite services must meet or exceed the following standards:
- 6.1.1 The provider must meet and comply with all Federal, State and local rules, regulations and standards applying to the service being provided.
 - 6.1.2 The provider must be a Delaware-licensed home health agency or personal assistance services agency.
 - 6.1.3 The provider must be able and willing to provide respite care seven (7) days a week with extended hours as needed.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

- 6.1.4 Provider staff must be fully trained and professionally qualified in accordance with applicable licensing requirements with supplemental training provided, as appropriate, to support the provision of care to the population served through this program.
 - 6.1.5 The provider must maintain, follow, and continually update a training and supervision program to ensure that respite staff is fully trained and familiar with agency procedures.
 - 6.1.6 In-home case assessments must be completed within five (5) working days of receipt of the service referral from DSAAPD.
 - 6.1.7 A plan of care must be developed for each new care recipient within five working days after assessment.
 - 6.1.7.1 The plan must identify those services to be provided to the care recipient to relieve the caregiver.
 - 6.1.7.2 The caregiver must play an integral role in the development of the plan to ensure that the hours and services provided meet his/her needs and the needs of the care recipient.
 - 6.1.8 Assessments, plans of care and other service records must be kept in a secure location to protect confidentiality.
 - 6.1.9 The provider must coordinate with DSAAPD on the maintenance and submission of needed service-related data.
 - 6.1.10 The provider must notify DSAAPD of problems which threaten consumer service.
 - 6.1.11 The provider must notify DSAAPD and the consumer in writing two weeks prior to termination of services to any one consumer.
 - 6.1.11.1 The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
 - 6.1.11.2 The notification must include the proposed plan of care that will be provided during the two week period.
 - 6.1.12 The provider must give DSAAPD thirty days' notice if terminating five or more consumers at a given time.
- 6.2 Allowable activities:
- 6.2.1 The agency must have the capacity to provide, at a minimum, the following service components based on the care recipient's individualized care plan:
 - 6.2.1.1 Household duties such as light cleaning, laundry and meal preparation.
 - 6.2.1.2 Personal care services for the care recipient such as bathing, shampooing, shaving, dressing and toileting.
 - 6.2.1.3 Companionship.
 - 6.2.1.4 Training / Instruction / Cueing.
- 6.3 Prohibited activities:
- 6.3.1 For purposes of planning and reimbursement, respite care may not include any of the following:
 - 6.3.1.1 Lawn care, garden care, raking or snow removal.
 - 6.3.1.2 Heavy-duty cleaning, furniture moving, or other heavy work.
 - 6.3.1.3 Financial or legal advice or services (except for referral to qualified agencies or programs).



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

7.0 INVOICING REQUIREMENTS

- 7.1 The provider will invoice DSAAPD pursuant to the DSAAPD Policy Manual for Contracts, Policy Log Number X-Q, Invoicing, utilizing the DSAAPD provided Invoicing Workbook for the Respite Care service (IW-017 & IW-018).

8.0 CONTRIBUTIONS

- 8.1 DSAAPD staff will inform care recipients, family members, and/or caregivers of the cost of providing respite service and will offer them the opportunity to make voluntary contributions to help defray the cost, thereby making additional service available to others.
- 8.1.1 DSAAPD staff will, with the care recipient and/or caregiver, determine the recommended contribution amount per unit of service. The amount will be documented by DSAAPD on the service referral form.
- 8.2 Providers must have procedures in place to:
- 8.2.1 Protect privacy and confidentiality with respect to contributions.
- 8.2.2 Safeguard and account for all contributions.
- 8.2.3 Use the contributions to expand services.
- 8.3 No eligible participant will be denied service because of his/her inability or failure to make a contribution.

APPENDIX D: *Budget*

Unit Cost Match Contract Budget

Agency: Christiana Care HH & CS, Inc.
Program/Service: Respite Care Services
Contract Year: October 1, 2016 - September 30, 2017

SSBG

A.	Provider Unit Cost	\$30.15
B.	Planned Service Units - Contract Year	3,482
C.	Total Resources Needed	
a.	Maximum DSAAPD Resources (A x B)	\$104,972

OAA Programs (Title III)

A.	Provider Unit Cost	\$30.15
B.	OAA (Title III) Match Requirement	\$3.35
C.	DSAAPD Reimbursement Rate (A - B)	\$26.80
D.	Planned Service Units	10,260
E.	Total Resources Needed:	
a.	Maximum DSAAPD Resources (C x D)	\$274,941

DSAAPD Funding Required	\$379,913
Contract Value with Required Match	\$414,280

Unit Cost Match Breakdown

Agency: **Christiana Care HH & CS, Inc.**

Program/Service: **Respite Care Services**

Contract Period: **October 1, 2016 - September 30, 2017**

Unit Cost Breakdown	Unit Cost Total
Staff Salaries	\$17.29
Fringe Benefits	\$5.19
Travel & Training	
Travel (Mileage x .40 per mile)	\$1.13
Training	\$0.23
Contractual	
Rent	\$0.95
Electricity	\$0.00
Heat/Other Utilities	\$0.00
Phone/Internet/Media/Postage	\$0.56
Insurance	\$0.34
Repairs/Maintenance	\$0.47
Supplies	\$0.26
Other: Identify (ID) in Methodology	\$0.02
Equip/Other: ID in Methodology	\$0.00
Indirect/Other: ID in Methodology	\$3.71
Total Unit Cost	\$30.15

Methodology of Unit Cost Breakdown

The direct care salary includes shift differential for weekends and after-hours visits, overtime, travel time, paid time off, training and inservice time. Salary cost includes a 2.5% merit increase. Unit cost is calculated by dividing total direct salary costs for the agency's home health aide and respite programs by the total number of hourly service units provided.

Benefits are 30% of total direct salary cost. Unit cost is calculated by dividing the total benefit costs for the Home Health aide and respite programs by the number of hourly units provided. Benefits include employee health, dental and life insurance, worker's compensation, pension/employer defined retirement contribution and FICA.

Mileage reimbursement @ \$0.40 / mile for staff travel to patient homes (visit). The average trip to a patient home (visit) is 5.9 miles. 5.9 miles x \$0.40 = \$2.36 cost per patient visit. A patient visit is approximately 2.09 hours long. \$2.36 / 2.09 hrs = \$1.13 / service unit.

Unit cost is calculated by dividing the total program's training costs by the number of hourly service units the program provides to the community.

Costs for office space for supervisory and administrative staff is allocated based on square footage to the Home health aide and respite programs. Unit cost is calculated by dividing the total program's allocated cost by the number of hourly service units the program provides to the community.

Costs for Telephone service, answering service, information system support costs, etc. Unit cost is calculated by dividing total program's costs by the number of hourly service units the program provides to the community.

Unit cost is calculated by dividing the total program's allocated insurance costs by the number of hourly service units the program provides to the community.

Unit cost is calculated by dividing the total program's allocated maintenance, maintenance contract and office cleaning costs by the number of hourly service units the program provides to the community.

Unit cost is calculated by dividing the total program's supply costs by the number of hourly service units the program provides to the community.

Costs for staff appreciation/recognition items. Unit cost is calculated by dividing total program's costs by the number of hourly service units the program provides to the community.

Salary costs for admin support & supervisory oversight and associated fringe benefits at 30%. Salary costs are allocated based on amount of project hours and unit cost is calculated by dividing the total program's costs by the No. of hourly service units of the program. Per instructions, admin costs were moved to the indirect costs section on budget form.

APPENDIX E: *DSAAPD Policy Manual for Contracts*
(Included by Reference)

Link to DSAAPD Policy Manual for Contracts:

http://dhss.delaware.gov/dhss/dsaapd/files/dsaapd_provider_manual.pdf

APPENDIX F: *Request for Proposal*

Included by Reference: ***HSS 14-001***

APPENDIX G: *Work Plan*

Provider Work Plan for Respite Care Services

Provider Name:	Christiana Care Home Health & Community Services, Inc.
Contract Year:	Current Year

SERVICE AREA

Providers are to specify the Service Area (s) for which they will provide Respite Care services for the contract year (i.e. list STATEWIDE; or, NEW CASTLE, KENT, and/or SUSSEX, as appropriate).

STATEWIDE

For situations where an agency is providing service in only SUB-AREAS of a County, please indicate **ALL ZIP codes, by County**, for which the provider **DOES NOT** accept Respite Care referrals under your current Work Plan:

ZIP CODES

New Castle County	N/A
Kent County	N/A
Sussex County	N/A

WORK PLAN / LICENSURE

Please describe any consumer needs that your agency **cannot** accept under your current Work Plan or State Licensure:

N/A

Respite Services: effective June 15, 2016

Proposed Methodology and Work Plan

1. Service Goal

Many families and service providers have identified respite care as an essential community service. Respite care allows caregivers planned time off from the continuous care of their family member or loved ones. This planned time off reduces caregiver stress and exhaustion from the care demands of a frail member, and decreases the likelihood of client institutionalization due to caregiver "burn out."

During our initial telephone interview with the caregiver, we evaluate the caregivers time preferences, and days of week. This initial phone assessment allows us to act quickly on the caregiver's request for services that will alleviate further stress and tension in the home. A professional nurse completes a detailed assessment of the caregiver's needs that begins with completion of the Caregiver Assessment Form. The answers to the initial assessment questions contribute to our understanding of the caregiver's needs. Office personnel review the form to identify requests for additional time, change in schedule or staff, and any care delivery concerns to be resolved. This additional step assures that caregiver's needs are recognized and met.

2. Service Area

Christiana Care Visiting Nurse Association (CCVNA) provides respite care to eligible clients throughout the State of Delaware.

3. Service Location

CCVNA provides Title III Respite Care to clients in the client's own home. The home settings offers several advantages: enhanced availability of respite care providers: flexibility in providing care to patients with more complex needs and individualization of the care plan according to the patient's physical and psychosocial needs.

4. Time Frames

TIME FRAME SCHEDULE

RESPONSIBILITIES	TIME FRAME
PROCESSING REQUESTS	*TARGET 3 DAYS/NO GREATER THAN 5 DAYS
IN-HOME ASSESSMENT	*TARGET 3 DAYS/NO GREATER THAN 5 DAYS
PLAN OF CARE DEVELOPMENT	*TARGET 3 DAYS/NO GREATER THAN 5 DAYS
CAREGIVER ASSESSMENT	*TARGET 3 DAYS/NO GREATER THAN 5 DAYS
REASSESSMENT	WITHIN 60 DAYS

*Indicates client's acceptance into the respite care program

5. Action Plan/Service Standards

CCVNA provides Title III Respite Care services according to the standards established by the Department of Health and Social Services, Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD), often exceeding these requirements.

General: Requests for service under the respite grant are normally processed within three (3) working days of receipt.

In-Home Respite: Respite care may be provided, as available, hourly, or on short term live-in basis by the homemaker staff. To ensure the appropriateness of this level of service, a professional nurse evaluates all cases. Respite services are reimbursed at the agreed hourly rate.

Client Evaluation/Case Management: CCVNA's professional nurses have a minimum of one-year of experience with geriatric clients, and are MSN, BSN, and/or diploma prepared. The professional nurse develops a client care plan during this initial visit for all in-home cases. This care plan reflects the patient's needs and other active services to avoid any duplication of services.

Client Donations: During the initial assessment before the start of services, there is a discussion of the need for client contributions. Clients are apprised of the cost of the service to DSAAPD. Client donations are determined by DSAAPD CSP. Any client contributions received are deducted from the DSAAPD monthly invoice, and support additional units of service. Services are not denied to anyone unable to contribute.

Change in Condition: All respite care assistants report any change(s) in the client's condition to the Client Service Supervisor and/or the professional nurse. When changes or concerns are identified, a professional nurse responds promptly.

To evaluate the need for continued service, or a need for referral to other community services, the professional nurse completes the caregiver reassessment form within 60 days. The visit activity record is secured to ensure confidentiality.

6. Staff Duties and Training Activities:

The activities of the respite care assistant include light housekeeping, personal care, assistance with the activities of daily living including dressing, feeding, laundry, and food preparation. The respite care assistant also provides companionship which stimulates the client to achieve the goals established in client's comprehensive Individualized Care Plan. Caregivers are taught how to assist with non-skilled therapy and educating other family members about the personal care services provided by our respite care assistants. All these services are specified in the plan of care.

All respite care assistants are oriented to CCVNA and their duties and responsibilities. The staff development coordinator oversees the respite care assistant orientation, with input from the branch manager.

The agency's Home Health Clinical Educators/professional nurses provide field supervision to all new homemakers and home health aides to evaluate their skill and competency. Our home health aide training class includes 80 hours of class time and practical clinical experience designed to train homemakers to care for more debilitated and disabled patients. This training prepares our respite care assistants to care for a variety of patients in the home. In addition to the homemaker/home health assistant training program, all agency staff is required to complete 12 in-service hours annually, along with monthly team meetings.

CCVNA provides administrative services and fulfills program reporting requirements. All client service records, costs, and CCVNA procedures are reviewed monthly, or more frequently, as indicated. CCVNA understands the prohibited service components under the contract and agrees to comply with the stated guidelines in the Service Specifications.

Assessment: A professional nurse assesses all cases within three (3) working days of the client's acceptance into the program. This initial assessment of the patient and family determines the respite care arrangement that best meets their needs. The assessment form documents relevant demographic, medical, and social characteristics pertinent to the program's target populations. The assessment also includes baseline data elements for use in program evaluation.

An initial comprehensive Individualized Plan of Care will be developed during this initial visit for all in-home cases. This plan of care reflects client needs as well as evaluation of other active services to avoid duplication. All homemaker/respite cases are reassessed within 60 days, and reevaluated by the professional nurse to determine if the client's needs have changed due to: changes in their condition or situation; to review the appropriateness of the plan of care; and to assess client satisfaction with the services.

Client Records: Client visit notes are recorded by the respite care assistant through telephony (automated time collection system) or written in the client's record. All records are secured to ensure confidentiality. An in depth explanation of the telephony system is below in section 7.

In-Home Respite: Respite care services are provided by respite care assistants, who are fully trained CCVNA home health assistants. Activities of the respite care assistant include light housekeeping, personal care, dressing, shampooing, feeding, laundry, errands, shopping, and food preparation. The respite care assistant also provides companionship that stimulates the client to achieve care plan goals. Assistance with non-skilled therapy and educating families in personal care are other services provided by respite care assistants. All of these services are consistent with the service standards and are specified in the client's plan of care.

Respite care will be provided in the client's home for a minimum of 1 hour and for up to 72 hours. Services are provided hourly at an hourly rate. CCVNA also has a 24-hour daily rate for in-home respite services.

Client Fees: On program entry, clients and family members are informed of program costs. Income received from client fees will be used to provide additional units of service for respite care. The fees received from clients using the suggested contribution sliding fee scale will be deducted from the monthly invoices submitted by CCVNA to DSAAPD.

7. Service and Client Priorities

The Telephony data collection system, will assure the client safety. Telephony's features are similar to that of an automated banking system. The home health assistant/homemaker will call a toll-free number and then enter their unique employee identification number and secure password in order to obtain specific information regarding their schedule. The home health assistant/homemaker will also be required to call the same toll-free number when arriving at a client's home. At that time the system will alert office personnel that the visit is in progress. When a home health assistant fails to report for a scheduled visit within a specified amount of time, the system will generate an "alert". This will enable office personnel to take immediate action regarding the clients visit. The telephony system will also allow the home health/homemaker to enter completed patient and non-patient related activities. This information is stored in the computer, eliminating the need for time sheets. If the home health assistant/homemaker is unable to enter visit activity through telephony system, a written time sheet is completed. Visit activity reports can be generated for client or clinical review upon request. Since the telephony system is equipped with an automated number identification (ANI), calls from the client's home are electronically linked to our client database. The ANI validates calls made from the client's home. The telephony system was implemented in the fall of 2003. Policies and procedures for Telephony were established for quality assurance.

8. Outreach Activities

Clients referred to the Evergreen Centers program who are not eligible for adult day care are evaluated for in-home respite care. Discharge planners at hospitals and our clinicians who encounter patients for skilled care, therapy, and/or social work may utilize the Alzheimer's Respite program as part of the client's discharge plan.

9. Agency Linkages

CCVNA maintains a comprehensive network of community resources throughout Delaware and the region. These include other members of United Way of Delaware, other affiliated members of the Christiana Care Health System (Christiana Hospital, Wilmington Hospital, and PMRI), the general medical community, businesses and foundations, home health care agencies in Delaware and the region.



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Services for Aging and Adults with Physical Disabilities

Contract No. 35-1400-2017-67

CATS Sys Doc ID: 021739-0000-0000

PROFESSIONAL SERVICES AGREEMENT For RESPITE CARE SERVICES

This Professional Services Agreement ("Agreement") is entered into as of October 1, 2016 and will end on September 30, 2017, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults with Physical Disabilities ("Delaware"), and Epic Health Services (DE), LLC. (the "Vendor"), with offices at 5220 Spring Valley Rd, Suite 400, Dallas, TX 75254.

WHEREAS, Delaware desires to obtain certain services for: Respite Care Services.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof, including Appendix A, Divisional Requirements; Appendix B, HIPPA Business Associate Agreement; Appendix E, Policy Manual for Contracts; and, the other appendices, as referenced.
- 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 proposal, **HSS-14-001**, attached hereto as Appendix F; and (c) Vendor's response to the request for proposal, attached hereto as Appendices D, Budget and G, Work Plan. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

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

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from October 1, 2016 through September 30, 2017.
- 2.2. Delaware will pay Vendor for the performance of services described in Appendix C, Service Specifications. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D, Contract Budget.
- 2.3. Delaware's obligation to pay Vendor for the performance of services described in Appendix G, Work Plan, will not exceed the fixed fee amount of **\$290,810**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4. 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 **35-1400-2017-67** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.5. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.6. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.7. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

- 2.8. 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.
- 2.9. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- 2.10. Invoices shall be submitted to: william.abernathy@state.de.us, or as directed.

3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager.
- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause,

Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

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

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do

not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

- 5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:

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

Vendor shall return any original data provided by Delaware.

- 5.6. Delaware shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.
- 5.7. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- 6.2. Vendor retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.
- 6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any

ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

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

- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
- e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

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

10. Employees.

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

11. Independent Contractor.

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

insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

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

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

12. Dispute Resolution.

12.1. At the option of, and in the manner prescribed by the Office of Management and Budget (OMB), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, OMB elects to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mediation by a mediator selected by OMB, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of OMB, to the Office of Management and Budget, Government Support Services Director, for final and binding arbitration. OMB reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by Delaware law and venue shall be in Delaware. The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

13. Suspension.

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

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

suspension of performance by Delaware based on appropriated funds and approval by Delaware.

14. Termination.

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

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

14.2. 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 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

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

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

14.4. 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.

14.5. 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.

14.6. Gratuities.

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

- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. 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.

16. Assignment; Subcontracts.

- 16.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.
- 16.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.
- 16.3. 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.
- 16.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.
- 16.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

17. Force Majeure.

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

18. Non-Appropriation of Funds.

- 18.1. 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.
- 18.2. 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.

19. State of Delaware Business License.

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

20. Complete Agreement.

20.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

20.2. 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.

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

21. Miscellaneous Provisions.

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

21.2. 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.

21.3. 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.

21.4. 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.

- 21.5. 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.
- 21.6. 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.
- 21.7. 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.
- 21.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* ' 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22. Insurance.

22.1. 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.
- b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. As applicable and determined necessary by the State, the Vendor shall also maintain:

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. 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 as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

22.4. 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:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy.
New Castle, DE. 19720

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

23. 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.

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 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:

DELAWARE:
Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building Annex – Room 107
New Castle, DE. 19720
Attn: Contract Manager

VENDOR:
Epic Health Services (DE), LLC.
5220 Spring Valley Rd, Suite 400
Dallas, TX 75254

Contract No. 35-1400-2017-67
CATS Sys Doc ID: 021739-0000-0000

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

Original On File

For the State of Delaware:
Division of Services for Aging & Adults with
Physical Disabilities (DSAAPD)

Witness

Original On File

for Lisa Bond
Director, DSAAPD

8-10-16
Date

For the Contractor:
Epic Health Services (DE), LLC.

Original On File

Original On File

Witness

David S. Reimer, M.S., C.H.B.C.
V.P. Government Relations and Contracting

8-3-16
Date

APPENDIX A: *Divisional Requirements*

APPENDIX A: Divisional Requirements

Sanctions – Revised 6/22/16

The Division reserves the right to reduce the number of people a Contractor currently serves, restrict the number of referrals a Contractor may receive, or rescind authorization to operate one or more service sites (e.g., neighborhood home, apartment) or any combination of such measures as sanctions for documented unsatisfactory contract performance as determined by the Division. The Division may impose such sanctions for a period of between 30 to 365 days, with the right to renew the sanctions at the Division's sole discretion.

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.
7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. 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 lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.

10. The contractor acknowledges that no state or federal funds may be requested unless the contractor has the local resources to meet the required match, if applicable. These resources may not be used as match for any other program. Failure of any contractor to document and provide the budgeted required match could result in an audit finding and the funds returned to the Division.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 13 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.
17. The contractor of an Older Americans Act program acknowledges that the total cost of the contract, excluding program income, must include a 10% match of non-DSAAPD resources (e.g. local cash and/or in-kind that is provided by the contractor). Any budget items - including salaries and/or fringe benefits - used for the match must not be from Federal or State Funds and must not be used as a match for another program. During the year-end closeout, the contractor will refund all unmatched DSAAPD funds as required by Federal regulations.

APPENDIX B: *HIPPA Business Associate Agreement*

APPENDIX B: HIPAA Business Associate Agreement

RECITALS

WHEREAS, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the "Agreement") which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate ("CE Affiliate") that involve the use or disclosure of Protected Health Information ("PHI") that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the "HIPAA Rules") issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as "HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), as each is amended from time to time. The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI.

WHEREAS, Business Associate provides Respite Care Services for Covered Entity pursuant to a contract dated October 1, 2016 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information ("PHI") to Business Associate (collectively, the "Master Agreement");

WHEREAS, Business Associate, in the course of providing services to Covered Entity, may have access to PHI and may be deemed a business associate for certain purposes under HIPAA;

WHEREAS, the Parties contemplate that Business Associate may obtain PHI, with Covered Entity's knowledge and consent, from certain other business associates of Covered Entity that may possess such PHI; and

WHEREAS, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate's obligations with respect to its handling of the PHI, whether such PHI was obtained from another business associate of Covered Entity or directly from Covered Entity;

NOW, THEREFORE, for mutual consideration, the sufficiency and delivery of which is acknowledged by the Parties, and upon the premises and covenants set forth herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.

2. **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:

(a) **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.

(b) **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:

- (i) use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;
 - (ii) use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
 - (iii) de-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.
- (c) **Minimum Necessary.** Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.
- (d) **Safeguards.** Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.
 - (i) To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.
 - (ii) The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act §13402(h) and any guidance issued thereunder.
 - (iii) Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.
- (e) **Agents and Subcontractors.** Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.

(f) **Reporting.** Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.

(i) In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 2(g) of this BAA.

(ii) Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.

(ii) Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

(g) **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA or the Master Agreement.

(h) **Audits and Inspections.** Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary, in a time and manner mutually agreed to by the Parties or designated by the Secretary, for purposes of the Secretary determining the Covered Entity's compliance with HIPAA.

(i) **Accounting.** Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R. §164.528 and any subsequent regulations issued thereunder. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.

(j) **Designated Record Set.** While the Parties do not intend for Business Associate to maintain any PHI in a designated record set, to the extent that Business Associate does maintain any PHI in a designated record set, Business Associate agrees to make available to Covered Entity PHI within fourteen (14) days:

(i) for Covered Entity to comply with its access obligations in accordance with 45 C.F.R. §164.524 and any subsequent regulations issued thereunder; and

(ii) for amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R. §164.526 and any subsequent guidance.

(k) **HITECH Compliance Dates.** Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.

3. **Obligations of Covered Entity.**

- (a) Covered Entity agrees to notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, including disclosure of data to insurers and health plans when the patient pays for medical services in full and requests that such notification not be made, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (c) Covered Entity agrees to notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) Covered Entity agrees to limit its use, disclosure, and requests of PHI under this BAA to a limited data set or, if needed by Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request.

4. **Term and Termination.**

- (a) **Term.** This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.
- (b) **Termination Upon Breach.**
 - (i) Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if nonseverable, the Master Agreement.
- (c) **Termination by Either Party.** Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.
- (d) **Effect of Termination.**
 - (i) To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from, or created or received by Business Associate on behalf of, Covered Entity. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.
 - (ii) If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate

agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

(iii) Without limiting the foregoing, Business Associate may retain copies of PHI in its workpapers related to the services provided in the Master Agreement to meet its professional obligations.

5. **Miscellaneous.**

(a) **Regulatory References.** A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) **Amendment.** The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

(c) **Method of Providing Notice.** Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

(d) **Parties Bound.** This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

(e) **No Waiver.** No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

(f) **Effect on Master Agreement.** This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

(g) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit the Covered Entity to comply with HIPAA and any subsequent guidance.

(h) **No Third Party Rights.** Except as stated herein, the terms of this BAA are not intended nor should they be construed to grant any rights, remedies, obligations, or liabilities

whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.

(i) **Applicable Law.** This BAA shall be governed under the laws of the State of Delaware, without regard to choice of law principles, and the Delaware courts shall have sole and exclusive jurisdiction over any dispute arising under this Agreement.

(j) **Judicial and Administrative Proceedings.** In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.

(k) **Transmitting Electronic PHI.** Electronic PHI transmitted or otherwise transferred from between Covered Entity and Business Associate must be encrypted by a process that renders the Electronic PHI unusable, unreadable, or indecipherable to unauthorized individuals within the meaning of HITECH Act § 13402 and any implementing guidance including, but not limited to, 42 C.F.R. § 164.402.

6. **IN WITNESS WHEREOF**, the Parties hereto have executed this BAA to be effective on the date set forth above.

Covered Entity

Original On File

By:

for Name: Lisa Bond

Title: Director, DSAAPD

Date:

8-10-16

Business Associate

Original On File

By:

Name: David S. Reimer, M.S., C.H.B.C.

Title: V.P. Government Relations and Contracting

Date:

8-3-16

APPENDIX C: *Service Specifications*



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

Revision Table

Revision Date	Sections Revised	Description
11/26/13		Original
12/18/13	6.1.6.1	Deleted: <i>The agency must complete a caregiver and care recipient assessment form as provided by DSAAPD.</i>
7/7/16	6.1.10- 6.1.12;; 6.1.11.1, 6.1.11.2	Added requirements that agency must notify CSP when services are cancelled.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

1.0 SERVICE DEFINITION

- 1.1 Respite care provides short-term relief to caregivers who support the needs of older persons; persons with Alzheimer's disease or related dementias; or adults with physical disabilities. Respite care is provided in the home of the care recipient or caregiver and can be provided in the absence of the caregiver or while the caregiver remains in the home.

2.0 SERVICE GOAL

- 2.1 The goal of respite care is to provide a caregiver with relief from the demands of caregiving. The intent is to maintain the caregiver's health and well-being; reduce stress, and prevent exhaustion while ensuring continuous care for the care recipient.

3.0 SERVICE UNIT

- 3.1 The unit of service for respite care is one hour.

4.0 SERVICE AREA

- 4.1 Respite care is available to all eligible persons within Delaware subject to availability of the service.
4.2 Providers may apply for sub-areas of the State.

5.0 ELIGIBILITY

- 5.1 DSAAPD staff will determine eligibility for respite care and authorize service hours.
5.2 In order to qualify for the service, a care recipient must:
5.2.1 Be a resident of the State of Delaware.
5.2.2 Be unable to perform at least two activities of daily living (ADL's) (basic activities such as eating, bathing, dressing, toileting, and mobility) without substantial human assistance or be in need of substantial assistance because of behavior that poses a serious safety risk.
5.2.3 Currently receive substantial in-home care from a caregiver.
5.2.4 Fall within one or more of the following eligibility groups:
5.2.4.1 Person aged 60 or over.
5.2.4.2 Person of any age with Alzheimer's disease or related dementia.
5.2.4.3 Person aged 18 or over with a physical disability.
5.3 DSAAPD staff will apply additional eligibility and/or targeting criteria based on requirements of the service funding source(s), as appropriate.
5.4 DSAAPD will establish service caps based on available funds. Respite service hours may be authorized by DSAAPD staff above established caps in cases of emergency or extreme need.

6.0 SERVICE STANDARDS

- 6.1 Respite services must meet or exceed the following standards:
6.1.1 The provider must meet and comply with all Federal, State and local rules, regulations and standards applying to the service being provided.
6.1.2 The provider must be a Delaware-licensed home health agency or personal assistance services agency.
6.1.3 The provider must be able and willing to provide respite care seven (7) days a week with extended hours as needed.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

- 6.1.4 Provider staff must be fully trained and professionally qualified in accordance with applicable licensing requirements with supplemental training provided, as appropriate, to support the provision of care to the population served through this program.
- 6.1.5 The provider must maintain, follow, and continually update a training and supervision program to ensure that respite staff is fully trained and familiar with agency procedures.
- 6.1.6 In-home case assessments must be completed within five (5) working days of receipt of the service referral from DSAAPD.
- 6.1.7 A plan of care must be developed for each new care recipient within five working days after assessment.
 - 6.1.7.1 The plan must identify those services to be provided to the care recipient to relieve the caregiver.
 - 6.1.7.2 The caregiver must play an integral role in the development of the plan to ensure that the hours and services provided meet his/her needs and the needs of the care recipient.
- 6.1.8 Assessments, plans of care and other service records must be kept in a secure location to protect confidentiality.
- 6.1.9 The provider must coordinate with DSAAPD on the maintenance and submission of needed service-related data.
- 6.1.10 The provider must notify DSAAPD of problems which threaten consumer service.
- 6.1.11 The provider must notify DSAAPD and the consumer in writing two weeks prior to termination of services to any one consumer.
 - 6.1.11.1 The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
 - 6.1.11.2 The notification must include the proposed plan of care that will be provided during the two week period.
- 6.1.12 The provider must give DSAAPD thirty days' notice if terminating five or more consumers at a given time.
- 6.2 Allowable activities:
 - 6.2.1 The agency must have the capacity to provide, at a minimum, the following service components based on the care recipient's individualized care plan:
 - 6.2.1.1 Household duties such as light cleaning, laundry and meal preparation.
 - 6.2.1.2 Personal care services for the care recipient such as bathing, shampooing, shaving, dressing and toileting.
 - 6.2.1.3 Companionship.
 - 6.2.1.4 Training / Instruction / Cueing.
- 6.3 Prohibited activities:
 - 6.3.1 For purposes of planning and reimbursement, respite care may not include any of the following:
 - 6.3.1.1 Lawn care, garden care, raking or snow removal.
 - 6.3.1.2 Heavy-duty cleaning, furniture moving, or other heavy work.
 - 6.3.1.3 Financial or legal advice or services (except for referral to qualified agencies or programs).



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging
and Adults with Physical
Disabilities

**Respite Care
Service Specifications**

7.0 INVOICING REQUIREMENTS

- 7.1 The provider will invoice DSAAPD pursuant to the DSAAPD Policy Manual for Contracts, Policy Log Number X-Q, Invoicing, utilizing the DSAAPD provided Invoicing Workbook for the Respite Care service (IW-017 & IW-018).

8.0 CONTRIBUTIONS

- 8.1 DSAAPD staff will inform care recipients, family members, and/or caregivers of the cost of providing respite service and will offer them the opportunity to make voluntary contributions to help defray the cost, thereby making additional service available to others.
- 8.1.1 DSAAPD staff will, with the care recipient and/or caregiver, determine the recommended contribution amount per unit of service. The amount will be documented by DSAAPD on the service referral form.
- 8.2 Providers must have procedures in place to:
- 8.2.1 Protect privacy and confidentiality with respect to contributions.
- 8.2.2 Safeguard and account for all contributions.
- 8.2.3 Use the contributions to expand services.
- 8.3 No eligible participant will be denied service because of his/her inability or failure to make a contribution.

APPENDIX D: *Budget*

Unit Cost Match Contract Budget

Agency: Epic Health Services (DE), LLC.
Program/Service: Respite Care Services
Contract Year: October 1, 2016 - September 30, 2017

SSBG

A.	Provider Unit Cost	\$25.70
B.	Planned Service Units - Contract Year	0
C.	Total Resources Needed	
a.	Maximum DSAAPD Resources (A x B)	\$0

OAA Programs (Title III)

A.	Provider Unit Cost	\$25.70
B.	OAA (Title III) Match Requirement	\$2.86
C.	DSAAPD Reimbursement Rate (A - B)	\$22.84
D.	Planned Service Units	12,730
E.	Total Resources Needed:	
a.	Maximum DSAAPD Resources (C x D)	\$290,810

DSAAPD Funding Required	\$290,810
Contract Value with Required Match	\$327,161

Unit Cost Match Breakdown

Agency: Epic Health Services (DE), LLC.

Program/Service: Respite Care Services

Contract Period: October 1, 2016 - September 30, 2017

Unit Cost Breakdown	Unit Cost Total
Staff Salaries	\$17.25
Fringe Benefits	\$4.30
Travel & Training	
Travel (Mileage x .40 per mile)	\$0.28
Training	\$0.44
Contractual	
Rent	\$0.26
Electricity	\$0.03
Heat/Other Utilities	\$0.03
Phone/Internet/Media/Postage	\$0.10
Insurance	\$0.26
Repairs/Maintenance	\$0.03
Supplies	\$0.15
Other: Identify (ID) in Methodology	\$0.00
Equip/Other: ID in Methodology	\$0.00
Indirect/Other: ID in Methodology	\$2.57
Total Unit Cost	\$25.70

Methodology of Unit Cost Breakdown

Direct support staff plus local supervisory staff dedicated to project

Projected to be 25% of Unit Cost for staff Salaries

Annual cost / total units of service proposed

Annual cost / total units of service proposed

Annual pro rata share / total units of service proposed

Annual pro rata share / total units of service proposed

Annual pro rata share / total units of service proposed

Annual pro rata share / total units of service proposed

Annual pro rata share / total units of service proposed

Annual pro rata share / total units of service proposed

Office and direct service-related supplies annual cost / total units of service proposed

Includes pro rata share of corporate support services, payroll, legal, billing/collections, and regional leadership oversight annualized / total units of service proposed

APPENDIX E: *DSAAPD Policy Manual for Contracts*
(Included by Reference)

Link to DSAAPD Policy Manual for Contracts:

http://dhss.delaware.gov/dhss/dsaapd/files/dsaapd_provider_manual.pdf

APPENDIX F: *Request for Proposal*

Included by Reference: ***HSS 14-001***

APPENDIX G: *Work Plan*

Provider Work Plan for Respite Care Services

Provider Name:	Epic Health Services (DE), LLC.
Contract Year:	Current Year

SERVICE AREA

Providers are to specify the Service Area (s) for which they will provide Respite Care services for the contract year (i.e. list STATEWIDE; or, NEW CASTLE, KENT, and/or SUSSEX, as appropriate).

STATEWIDE

For situations where an agency is providing service in only SUB-AREAS of a County, please indicate **ALL ZIP codes, by County**, for which the provider **DOES NOT** accept Respite Care referrals under your current Work Plan:

ZIP CODES

New Castle County	N/A
Kent County	N/A
Sussex County	N/A

WORK PLAN / LICENSURE

Please describe any consumer needs that your agency **cannot** accept under your current Work Plan or State Licensure:

N/A

Respite Services: effective October 1, 2016

G. PROPOSED METHODOLOGY AND WORK PLAN

This section shall describe in detail the approach that will be taken to carry out the activities described in the Scope of Services section of this RFP. Specific completion dates for the various tasks must be shown. The work plan shall outline specific objectives, activities and strategies, and resources.

RCHC uses best practices developed through over 30 years of experience. We have strong strategies in place for performing the services in this RFP. Our methodology and work plan are described in detail here.

Methodology and Work Plan

- | | |
|--------------------------------|--|
| 1. Service Goal | To provide a caregiver with relief from the demands of caregiving with the intent to maintain the caregiver's health and well-being, reduced stress, and prevent exhaustion while ensuring continuous care for the care recipient. |
| 2. Service Unit | <p>The unit of service for respite care is one hour; units will be determined based on DSAAPD-authorized hours of service</p> <p>RCHC will serve 35 unduplicated clients for a total of 10,937 units. This assumes that each client will receive 6 hours of respite weekly for 52 weeks.</p> |
| 3. Service Area (geographical) | New Castle, Kent and Sussex Counties |

Methodology and Work Plan

<p>4. Service Location (address, available space, accessibility and hours/days of operation)</p>	<p>Services will be rendered in client homes and coordinated by two RCHC branch locations:</p> <p>New Castle:</p> <p>908 B. New Churchman's Road, Ext. New Castle, DE 19720 (302)323-1436 Office Hours of Operation: 8:30am-5:00pm</p> <p>Services are available 24/7, and staff are available on holidays as well. This means that RCHC caregivers have access by telephone to a Supervisor or the Branch Manager at all times (on-call).</p> <p>Dover:</p> <p>1006 W. State College Road, Suite 201 Dover, DE 19904 (302)674-1982 Office Hours of Operation: 8:00am-4:30pm</p> <p>Services are available 24/7, and staff are available on holidays as well. This means that RCHC caregivers have access by telephone to a Supervisor or the Branch Manager at all times (on-call).</p>
<p>5. Service Activities</p>	<p>Household duties such as:</p> <ul style="list-style-type: none"> • Light cleaning, laundry and meal preparation <p>Personal care services such as:</p> <ul style="list-style-type: none"> • Bathing • Shampooing • Shaving • Dressing • Toileting <p>Companionship</p> <p>Training/Instruction/Cueing</p>
<p>6. Time frames to accomplish Work Plan</p>	<p>Contract term is one (1) year with the possibility of renewal for up to four (4) additional years contingent on funding and satisfactory performance. ResCare HomeCare is prepared to fulfill intended work plan requirements for the full 5 years</p> <p>Completion deadlines for specific tasks in the Scope of Services are addressed in the following narrative.</p>

Methodology and Work Plan

- | | |
|---|--|
| 7. Describe how you plan to meet the service standards listed in the program's service specifications | All Service Standards will be met. A full discussion of our service strategies is provided in the following narrative. |
| 8. Describe agency's internal program evaluation and monitoring process. | ResCare employs comprehensive quality improvement strategies to ensure quality of services throughout all program operations. See below for a full discussion. |
| 9. Describe the way volunteers are utilized in the program (if applicable). | NA |

Compliance and licensing. ResCare HomeCare complies with all applicable Federal, State, and local rules, regulations and laws applying to the provision of the service. We are and will remain in compliance as a skilled licensed HHA. ResCare is a JACHO-certified provider and maintains this status for our Delaware operations.

Providing Respite Care seven days a week. As stated in the table above, RCHC provides services 24 hours a day, seven days a week, including holidays. Supervisory staff is available on-call 24/7, when means staff have access to a supervisor at all times. This 24-hour availability also means that we can take in new clients on weekends and in cases of emergency as necessary.

Staff Training. We ensure that direct care staff have the knowledge, skills and resources they need to be successful at their jobs. All Certified Home Health Aides and non-certified home aides (direct care staff) are fully trained and professionally qualified in accordance with applicable licensing requirements, and supplemental training is provided to ensure that staff have the necessary skills and competence to provide quality care to program clients. All employees must receive extensive RCHC new hire orientation as well as competency skills training before they begin providing services. Staff receive competency training on an annual basis thereafter. They receive twelve (12) hours of in-service per year, and annual performance evaluations.

In-home assessment and care plan development. When an authorization (service referral) for Respite Care services is received from DSAAPD, the Director of Nursing reviews the service referral thoroughly for information regarding the duration of service and any special service requirements. The Customer Service Supervisor then contacts the informal caregiver and schedules a home visit at the earliest convenience of the caregiver to conduct an intake with the caregiver and care receiver. In the event that there is an urgent request for services, this process is expedited in order to initiate services within the timeframe requested.

During this initial home visit, an RCHC Registered Nurse completes an in-home case assessment. This is done within five (5) working days of the service referral or sooner.

The RN then develops a care plan in consultation with the caregiver and care receiver. The care plan identifies those services to be provided to the care recipient to relieve the caregiver. The tasks, frequency of visits and scheduling are established during the home visit. We ensure that these are based on the caregiver needs as well as those of the care receiver. The care plan is completed within five (5) working days of the assessment; Respite Care services are initiated after completion the care plan.

After the initial intake is complete, the Director of Nursing determines the direct care staff, (depending on the proposed service being provided) that is the "most suitable" match for the caregiver and care receiver's needs. The right match of client and staff is essential to facilitate trust between all parties and therefore clients can also select the caregiver that best fits their needs. Subsequent supervisory home visits are conducted by an RN at a minimum, every 60 days to ensure that the assigned staff are meeting the needs of the client and performing tasks according to the care plan. Supervisory visits are conducted more frequently for all services provided if clinical or other issues have been identified. The Supervisory Visit Documentation Form is completed at each visit. The Supervisory Visit Documentation form captures information such as:

- Satisfaction
- Attendance and punctuality
- Responsiveness to Client needs
- Appearance
- Respectfulness
- Environment – safety and cleanliness