

APPENDIX F: *Contract Boilerplate*

A) Introduction

1. This contract is entered into between the Delaware Department of Health and Social Services (the Department), and _____ (the Contractor).
2. The Contract shall commence on _____ and terminate on _____ unless specifically extended by an amendment, signed by all parties to the Contract. Time is of the essence.

B) Administrative Requirements

1. Contractor recognizes that it is operating as an independent Contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Contractor's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Contractor in their negligent performance under this Contract.
2. The Contractor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract. The Contractor is an independent contractor and is not an employee of the State.
3. During the term of this Contract, the Contractor shall, at its own expense, carry insurance with minimum coverage limits as follows:

	a) Comprehensive General Liability	\$1,000,000
and	b) Medical/Professional Liability	\$1,000,000/\$3,000,000
or	c) Misc. Errors and Omissions	\$1,000,000/\$3,000,000
or	d) Product Liability	\$1,000,000/\$3,000,000

All contractors must carry (a) and at least one of (b), (c), or (d), depending on the type of service or product being delivered.

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

e) Automotive Liability (Bodily Injury)	\$100,000/\$300,000
f) Automotive Property Damage (to others)	\$25,000

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

4. The policies required under Paragraph B3 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Contractor and the contractor's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.
5. The Contractor shall provide a Certificate of Insurance as proof that the Contractor has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance as detailed in Paragraph A 2.
6. Contractor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:
 - a. The negligence or other wrongful conduct of the Contractor, its agents or employees, or
 - b. Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided that
 - i. Contractor shall have been notified promptly in writing by Delaware of any notice of such claim; and
 - ii. Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

If Delaware promptly notifies Contractor in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Contractor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Contractor 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 Contractor;
- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Contractor;
- 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 Contractor's opinion is likely to be, held to be infringing, Contractor 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.

7. The Contractor acknowledges and accepts full responsibility for securing and maintaining all licenses and permits, including the Delaware business license, as applicable and required by law, to engage in business and provide the goods and/or services to be acquired under the terms of this Contract. The Contractor acknowledges and is aware that Delaware law provides for significant penalties associated with the conduct of business without the appropriate license.
8. The Contractor agrees to comply with all State and Federal licensing standards and all other applicable standards as required to provide service(s) under this Contract, to assure the quality of services provided under this Contract. The Contractor shall immediately notify the Department in writing of any change in the status of any accreditations, licenses, or certifications in any jurisdiction in which they provide Service(s) or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, the Contractor understands that such action may be grounds for termination of the Contract.

If a contractor is under the regulation of any Department entity and has been assessed Civil Money Penalties (CMPs), or a court has entered a civil judgment against a Contractor or vendor in a case in which DHSS or its agencies was a party, the Contractor or vendor is excluded from other DHSS contractual opportunities or is at risk of contract termination in whole, or in part, until penalties are paid in full or the entity is participating in a corrective action plan approved by the Department.

A corrective action plan must be submitted in writing and must respond to findings of non-compliance with Federal, State, and Department requirements. Corrective action plans must include timeframes for correcting deficiencies and must be approved, in writing, by the Department.

The Contractor will be afforded a thirty (30) day period to cure non-compliance with Section 8(a). If, in the sole judgment of the Department, the Contractor has not made satisfactory progress in curing the infraction(s) within the aforementioned thirty (30) days, then the Department may immediately terminate any and/or all active contracts.

9. Contractor, including its parent company and its subsidiaries, and any subcontractor, including its parent company and subsidiaries, agree to comply with all terms, requirements and provisions of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and any other federal, state, or local, law, statute, regulation or applicable policy along with all amendments and revision of these laws, in the performance of this Contract and will not discriminate against any applicant or employee or service recipient because of race, creed, religion, age, sex, color, national or ethnic origin, disability, status as a person in a marriage versus a person in a civil union, veteran's status or any unlawful discriminatory basis or criteria. Contractor agrees to honor the conflict of interest provisions of the Delaware Code of Ethics, *29 Del. C. Ch. 58*.

10. Contractor has or will retain such employees, as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
11. Contractor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
12. Contractor warrants that its services will be performed in a good and workmanlike manner. Contractor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

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 Contractor for Delaware in connection with the provision of the Services, Contractor shall pass through or assign to Delaware the rights Contractor 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.

13. This Contract may be terminated in whole or in part by the Department upon five (5) calendar days written notice for cause or documented unsatisfactory performance, provided that, in its sole discretion, the Department may impose sanctions in lieu of termination as set forth in Appendix A attached to and incorporated into this Contract.

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

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

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

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

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

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

- b. Upon termination for default, the Department may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the Department shall have the right to make an unsolicited offer of employment to any employees of Contractor assigned to the performance of the Contract, notwithstanding any provisions in this document to the contrary.

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

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

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, models, maps, photographs, and reports or other material prepared by Contractor under this contract shall, at the option of the Department, become the property of the Department.

In the event of termination, the Contractor, upon receiving the termination notice, shall immediately cease work and refrain from purchasing contract related items unless otherwise instructed by the Department.

The Contractor shall be entitled to receive reasonable compensation as determined by the Department in its sole discretion for any satisfactory work completed on such documents and other materials that are usable to the Department. Whether such work is satisfactory and usable is determined by the Department in its sole discretion.

Should the Contractor cease conducting business, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of, or become subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors, then at the option of the Department, this Contract shall terminate and be of no further force and effect. Contractor shall notify the Department immediately of such events.

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

In the event the Department suspends performance by Contractor for any cause other than the error or omission of the Contractor, for an aggregate period in excess of 30 days, Contractor shall be entitled to an equitable adjustment of the compensation payable to Contractor under

this Contract to reimburse for additional costs occasioned as a result of such suspension of performance by the Department based on appropriated funds and approval by the Department.

Any notice required or permitted under this Contract shall be effective upon receipt and may be hand delivered with receipt requested or by registered or certified mail with return receipt requested to the addresses listed below. Either Party may change its address for notices and official formal correspondence upon five (5) days written notice to the other.

To the Department at: _____

To the Contractor at: _____

15. In the event of amendments to current Federal or State laws which nullify any term(s) or provision(s) of this Contract, the remainder of the Contract will remain unaffected.

If any term or provision of this Contract 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 Contract, 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. This Contract shall not be altered, changed, modified, or amended except by written consent of all Parties to the Contract.
17. The Contractor shall not enter into any subcontract for any portion of the services covered by this Contract without obtaining prior written approval of the Department. Approval by Delaware of Contractor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

Any such subcontract shall be subject to all the conditions and provisions of this Contract. The approval requirements of this paragraph do not extend to the purchase of articles, supplies,

equipment, rentals, leases and other day-to-day operational expenses in support of staff or facilities providing the services covered by this Contract.

18. This entire Contract between the Contractor and the Department is composed of these several pages and the attached:

Appendix A– Divisional Requirements
Appendix B – HIPPA Business Associate Agreement
Appendix C – Service Specifications
Appendix D – Contract Budget
Appendix F – DSAAPD Policy Manual for Contracts
DHSS Request for Proposal (RFP) # HSS-XX-XXX
Vendor’s Proposal in response to RFP #HSS-XX-XXX

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

Should a conflict arise in the language found among the above-named documents, the documents shall govern in the following order:

- 1) This DHSS Contract
- 2) DHSS Request for Proposal (RFP)# HSS-XX-XXX
- 3) Vendor’s Proposal in response to RFP # HSS- XX-XXX
- 4) Appendix A- Divisional Requirements
- 5) Appendix B - HIPPA Business Associate Agreement
- 6) Appendix C – Service Specifications
- 7) Appendix D - Contract Budget
- 8) Appendix F - DSAAPD Policy Manual for Contracts

If the scope of any provision of this Contract 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 Contract shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

Contractor may not order any product requiring a purchase order prior to The Department'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 Contract 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.

19. This Contract shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Contractor consents to jurisdiction and venue in the State of Delaware.

Except as may be otherwise provided in this contract, all claims, counterclaims, disputes and other matters in question between the Department and Contractor arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.

20. In the event Contractor is successful in an action under the antitrust laws of the United States and/or the State of Delaware against a vendor, supplier, subcontractor, or other party who provides particular goods or services to the Contractor that impact the budget for this Contract, Contractor agrees to reimburse the State of Delaware, Department of Health and Social Services for the pro-rata portion of the damages awarded that are attributable to the goods or services used by the Contractor to fulfill the requirements of this Contract. In the event Contractor refuses or neglects after reasonable written notice by the Department to bring such antitrust action, Contractor shall be deemed to have assigned such action to the Department.
21. Contractor covenants that it presently has no interest and shall not acquire any interests, direct or indirect, that would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that in the performance of this contract, it shall not employ any person having such interest.
22. Contractor covenants that it has not employed or retained any company or person who is working primarily for the Contractor, to solicit or secure this Contract, by improperly influencing the Department or any of its employees in any professional procurement process; and, the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement. For the violation of this provision, the Department shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
23. The Department shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. Contractor shall have no right to copyright any material produced in whole or in part under this Contract. Upon the request of the Department, the Contractor shall execute additional documents as are required to assure the transfer of such copyrights to the Department.

Contractor 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 Contractor retains title, whether individually by Contractor 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.

If the use of any services or deliverables is prohibited by court action based on a U.S. patent or copyright infringement claim, Contractor shall, at its own expense, buy for the Department the right to continue using the services or deliverables or modify or replace the product with no material loss in use, at the option of the Department.

24. Contractor agrees that no information obtained pursuant to this Contract may be released in any form except in compliance with applicable laws and policies on the confidentiality of information and except as necessary for the proper discharge of the Contractor's obligations under this Contract.
25. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by authorized representatives of all parties and attached to the original Contract.
26. If the amount of this contract listed in Paragraph C2 is over \$25,000, the Contractor, by their signature in Section E, is representing that the Firm and/or its Principals, along with its subcontractors and assignees under this Contract, are not currently subject to either suspension or debarment from Procurement and Non-Procurement activities by the Federal Government.

C) Financial Requirements

1. The rights and obligations of each Party to this Contract are not effective and no Party is bound by the terms of this contract unless, and until, a validly executed Purchase Order is approved by the Secretary of Finance and received by Contractor, *if required by the State of Delaware Budget and Accounting Manual*, and all policies and procedures of the Department of Finance have been met. The obligations of the Department under this Contract are expressly limited to the amount of any approved Purchase Order. The State will not be liable for expenditures made or services delivered prior to Contractor's receipt of the Purchase Order.
2. Total payments under this Contract shall not exceed \$ _____ in accordance with the budget presented in Appendix C. Payment will be made upon receipt of an itemized invoice from the Contractor in accordance with the payment schedule, if any. The contractor or vendor must accept full payment by procurement (credit) card and or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs, or conditions. Contractor is responsible for costs incurred in excess of the total cost of this Contract and the Department is not responsible for such costs.

Contractor 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 Contractor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt.

3. Validity and enforcement of this Contract is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the Department may immediately terminate this Contract, and absent such action this Contract shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

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

4. 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.
5. The Contractor is solely responsible for the payment of all amounts due to all subcontractors and suppliers of goods, materials, or services, which may have been acquired by or provided to the Contractor in the performance of this contract. The Department is not responsible for the payment of such subcontractors or suppliers.

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

6. The Contractor shall not assign the Contract or any portion thereof without prior written approval of the Department and subject to such conditions and revisions as the Department may deem necessary. No such approval by the Department of any assignment shall be deemed to provide for the incurrence of any obligations of the Department in addition to the total agreed upon price of the Contract.
7. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under this Contract in accordance with generally accepted accounting principles and practices. Contractor shall also maintain the financial information and data used by Contractor in the preparation of support of its bid or proposal. Contractor shall retain this information for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Department shall have access to such books, records, documents, and other evidence for the

purpose of inspection, auditing, and copying during normal business hours of the Contractor after giving reasonable notice. Contractor will provide facilities for such access and inspection.

8. The Contractor agrees that any submission by or on behalf of the Contractor of any claim for payment by the Department shall constitute certification by the Contractor that the services or items for which payment is claimed were actually rendered by the Contractor or its agents, and that all information submitted in support of the claims is true, accurate, and complete.

All invoices, reports, documents provided in response to an audit, and any documentation provided to the Department pursuant to any contractual obligation as set forth herein, including any chart or compilation of data, report, or other document produced by the Contractor for presentment to the Department shall contain, in a prominently displayed location, the following written certification:

“I hereby certify that the information reported herein is true, accurate, and complete. I understand that these reports are made in support of claims for government funds.”

Any certification related to information and documents produced to the Department shall be certified only by the Contractor’s Contract Manager

9. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the Department for disallowances shall be drawn from the Contractor's own resources and not charged to Contract costs or cost pools indirectly charging Contract costs.
10. When the Department desires any addition or deletion to the deliverables or a change in the services to be provided under this Contract, it shall so notify the Contractor. The Department will develop a Contract Amendment authorizing said change. The Amendment shall state whether the change shall cause an alteration in the price or time required by the Contractor for any aspect of its performance under the Contract. Pricing of changes shall be consistent with those prices or costs established within this Contract. Such amendment shall not be effective until executed by all Parties.

D) Miscellaneous Requirements

1. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 46, (PM #46, effective 3/11/05), and divisional procedures regarding the reporting and investigation of suspected abuse, neglect, mistreatment, misappropriation of property and significant injury of residents/clients receiving services, including providing testimony at any administrative proceedings arising from such investigations. The policy and procedures are included as Appendix _____ to this Contract. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Contractor’s procedures must include the position(s) responsible for the PM46 process in the provider agency. The Contractor must maintain documentation of staff training on PM46.

2. *When required by Law*, Contractor shall conduct child abuse and adult abuse registry checks and obtain service letters in accordance with 19 Del. Code Section 708; and 11 Del. Code, Sections 8563 and 8564. Contractor shall not employ individuals with adverse registry findings in the performance of this contract.
3. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 40 (PM #40, effective 3/10/2008), and divisional procedures regarding conducting criminal background checks and handling adverse findings of the criminal background checks. This policy and procedure are included as Appendix _____ to this Contract. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Contractor's procedures must include the title of the position(s) responsible for the PM40 process in the contractor's agency.
4. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 36 (PM #36, effective 9/24/2008), and divisional procedures regarding minimal requirements of contractors who are engaging in a contractual agreement to develop community based residential arrangements for those individuals served by Divisions within DHSS. This policy and procedure are included as Appendix _____ to this Contract. It is understood that adherence to this policy includes individuals/entities that enter into a contractual arrangement (*contractors*) with the DHSS/Division to develop a community based residential home(s) and apartment(s). Contractors shall be responsible for their subcontractors' adherence with this policy and related protocol(s) established by the applicable Division.
5. All Department campuses are tobacco-free. Contractors, their employees, and sub-contractors are prohibited from using any tobacco products while on Department property. This prohibition extends to personal vehicles parked in Department parking lots.

E) Authorized Signatures:

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

For the Contractor:

Name

Title

Date

For the Department:

Rita M. Landgraf
Secretary

Date

For the Division:

Lisa Bond
Acting Director

Date

DIVISIONAL REQUIREMENTS

Sanctions

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 for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. 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.
5. 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.
6. 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.
7. 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.
8. For Federally funded programs, <http://www.hhs.gov/forms/HHS690.pdf> (Assurance of Compliance) is incorporated by reference and made part of this agreement.
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 B. Administrative Requirements, Item 11 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.
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). During the year-end closeout, the contractor will refund all unmatched DSAAPD funds as required by Federal regulations.

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 [professional services] for Covered Entity pursuant to a contract dated [redacted], 201[redacted] 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

Business Associate

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____