STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES

REPRESENTATIVE PAYEE FOR ADULTS

ISSUED BY DIVISION OF SUBSTANCE ABUSE & MENTAL HEALTH

HSS-15-038

I. Overview

The State of Delaware Department of Health and Social Services Division of Substance Abuse & Mental Health seek professional services to provide REPRESENTATIVE PAYEE FOR ADULTS. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: 06/24/2015
Pre-bid Meeting	Date: 07/09/2015at 1:00 PM (Local Time)
Deadline for Questions	Date: 07/16/2015
Response to Questions Posted by:	Date: 07/23/2015
Deadline for Receipt of Proposals	Date: 08/19/2015at 11:00 AM (Local Time)
Estimated Notification of Award	Date: 10/15/2015

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3). Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PREBID MEETING

A mandatory pre-bid meting has not been established for this Request for Proposal.

A **pre-bid meeting** will be held on **July 9, 2015 at 1:00 PM** at **Herman Holloway Campus, 1901 N. DuPont Highway, 23 Mitchell Lane, Springer Building, Gymnasium While attendance is not mandatory, entities who wish to bid on this proposal are strongly encouraged to take advantage of this opportunity for face to face discussion with state personnel responsible for managing the contract(s) resulting from this solicitation. To better ensure meeting space will accommodate those desiring to attend, it is requested that bidders limit representation to 2 individuals. Bidders should RSVP by calling (302) 255-9290.**

II. Background/ Program Description

Delaware Health and Social Services, Division of Substance Abuse and Mental Health (DSAMH), is seeking proposals from qualified providers to provide Representative Payee services for adults throughout the State.

A representative payee program is intended to provide money management for registered consumers for the Division. The representative payee shall be directly responsible for payment of rent, utilities and transportation, disbursement of funds for food and clothing for the consumer, and the provision of daily or weekly amount of money for each consumer's personal use from their entitlements. Preference will be provided to applicants who propose to locate a representative payee, physically, on the county where the services will be provided.

An organizational representative payee ("rep payee") is an organization that already provides some case management services, spiritual guidance or community assistance then assumes fiduciary responsibility for administering and managing United States Social Security Disability or Supplemental Security Income for a person who is not fully capable of managing their own benefits. Organizational representative payees can include social service agencies, institutions, and state or local government agencies.

The need for the service is generally due to the fact that a growing number of beneficiaries have any family or friends are available to fill this role. For Social Security, an organizational representative payee is not the equivalent of having power-of-attorney. The organizational representative payee does not act as a legal guardian or conservator, but is expected to assist the person with money management, along with providing protection from financial abuse and victimization.

Beneficiaries generally are vulnerable members of society like young (under 18 years of age), elderly, and/or any demographic not capable of directing someone else to manage their finances who have some form of mental or developmental disability. The mental disability will generally be just severe enough to impair judgment, but not so much as to require inpatient hospitalization. This program will be restricted to Adults (age 18 or older).

For information regarding the Social Security Administration's Representative Payment Program go to: http://www.ssa.gov/payee/index.htm

For the Social Security Administration's "Guide for Organizational Representative Payee" go to: http://www.ssa.gov/payee/NewGuide/toc.htm

The goals for the services described in this RFP include, but are not limited to:

1. Provide money management services for registered consumers of the Division, who have the capacity to learn how to manage their own finances within two (2) years of initial service authorization.
2. Develop a budget in collaboration with consumers and their Division-assigned case manager.
3. Establish a separate bank account for representative payee services for consumers to ensure and efficient and flexible financial system to implement this money management service.
4. Ensure the timely and appropriate payment of rent, utilities, transportation, food, clothes, and other essential daily living needs of consumers.
5. Provide a daily or weekly amount of money for each consumer's personal use.
6. Provide ongoing money management and budgeting training and assessments of consumers' ability to manage their resources independently.
7. For consumers who begin to demonstrate the ability to become financially self-sufficient, provide opportunities for increased independence and work towards achieving complete independence from rep payee services.
8. Establish effective linkages with the United States Social Security Administration (SSA), state operated and purchase of service case management providers, and other pertinent continuity community agencies.
9. Maintain oversight of consumers' finances to ensure appropriate disbursement and receipt of funds and mitigate and detrimental reduction to these funds.

The Scope of Work is provided in **Appendix B** and made part of this Request for Proposals.

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Provide Delaware license(s) and/or certification(s) necessary to perform services as identified in the scope of work.

Prior to the execution of any contract, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required. The failure to provide a valid business license or submission of proof that no license is required by Delaware law shall be cause for the State to withdraw any contract award.

2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work in accordance with Appendix B.

3. Complete all appropriate attachments and forms as identified within the RFP.

4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section D, Item 7, subsection g (insurance).

5. Provide response to Employing Delawareans Report (Attachment 9).

6. Bidder shall list all contracts awarded to it or its predecessor firm(s) by the State of Delaware; during the last three years, by State Department, Division, Contact Person (with address/phone number), period of performance and amount. In addition, Bidder shall list any contract awarded to it or its predecessor firm(s) by the State of Delaware during the past ten (10) years if such contract was terminated by the State for cause, and shall include an explanation of the circumstances of such termination.

Bidder shall list all active litigations, regardless of jurisdiction, in which it, or its officers are named parties.

The Evaluation/Selection Review Committee will consider any information provided pursuant to these requirements and may contact each of these sources. Information regarding bidder performance gathered from these sources may be included in the Committee's deliberations and factored in the final scoring of the bid. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the bid."

7. Organizations Ineligible to Bid
Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Applicant Organization Eligibility

Applications for this RFP will be accepted from any non-profit, for profit or faith based organizations whose hiring and operational practices comply with all federal and State of Delaware laws and regulations. The organization will be required to provide evidence that both the applicant organization and the lead management staff proposed for the program have the knowledge and experience, as well as the depth of staffing, to provide the required services.

Additional organization eligibility requirements are identified in **Appendix B**

IV. Professional Services RFP Administrative Information

A. RFP Issuance

9. Public Notice
Public notice has been provided in accordance with 29 *Del. C.* §6981.

10. Obtaining Copies of the RFP
This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov . Paper copies of this RFP will not be available.

11. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

12. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Ceasar McClain
Contracts Manager
dsamhbusinessoperations@state.de.us

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

13. Consultants and Legal Counsel

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.

14. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

15. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract:

b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor:

c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes:

d. Has violated contract provisions such as;

1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;

e. Has violated professional ethical standards as may be set out in law or regulation; and

f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with 10 paper copies and 3 electronic copy on CD or DVD media disk. Please provide a separate electronic pricing file from the rest of the RFP proposal responses.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than 1**1:00 AM (Local Time)** on **Wednesday, August 18, 2015**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

Kieran Mohammed
Kieran.mohammed@state.de.us
DELAWARE HEALTH AND SOCIAL SERVICES
PROCUREMENT BRANCH
MAIN ADMIN BLD, SULLIVAN STREET
2ND FLOOR –ROOM #257
1901 NORTH DUPONT HIGHWAY
HERMAN M. HOLLOWAY SR. HEALTH AND
SOCIAL SERVICES CAMPUS
NEW CASTLE, DELAWARE 19720
PHONE: (302) 255-9290

Vendors are directed to clearly print "BID ENCLOSED" and "RFP # HSS-15-038" on the outside of the bid submission package.

Any proposal received after **4:30 PM** on the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears all risk of delays in delivery due to carrier error or weather-related carrier service interruptions. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. Proposal Costs and Expenses

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through **June 30, 2016**. The State of Delaware reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be maintained confidentially to the extent permitted by Executive Order # 31 and Title 29, Delaware Code, Chapter 100.

8. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware. Proposals that contain exceptions which - individually or in the aggregate- have the effect of altering, limiting, or interfering with the State of Delaware's chosen and advertised method of service delivery may be deemed Non-Conforming.

9. Concise Proposals

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

10. Realistic Proposals

It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

Subject to applicable law or the order of a court of competent jurisdiction to the contrary, all documents submitted as part of the vendor's proposal will be treated as confidential during the evaluation process. As such, vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to execution of the contract unless such disclosure is required by law or by order of a court of competent jurisdiction.

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 *Del. C.* § 10001, *et seq.* ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. Once a proposal is received by the State of Delaware and a contract has been executed, the content of selected and non-selected vendor proposals will likely become subject to FOIA's public disclosure obligations.

The State of Delaware wishes to create a business-friendly environment and procurement process. As such, the State respects the vendor community's desire to protect its intellectual property, trade secrets, and confidential business information (collectively referred to herein as "confidential business information"). Proposals must contain sufficient information to be evaluated. If a vendor feels that they cannot submit their proposal without including confidential business information, they must adhere to the following procedure or their proposal may be deemed unresponsive, may not be recommended for selection, and any applicable protection for the vendor's confidential business information may be lost.

In order to allow the State to assess its ability to protect a vendor's confidential business information, vendors will be permitted to designate appropriate portions of their proposal as confidential business information.

Vendor(s) may submit portions of a proposal considered to be confidential business information in a separate, sealed envelope labeled "Confidential Business Information" and include the specific RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not a "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed. A vendor's allegation as to its confidential business information shall not be

binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

12. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the State of Delaware and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

a. Primary Vendor

The State of Delaware expects to negotiate and contract with only one "prime vendor". The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

b. Sub-contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments when the State provides written consent; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Any and all use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** All sub-contractors must be approved by State of Delaware.

c. Multiple Proposals

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

13. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, discrepancies, omissions, unclear or ambiguous intent or meaning arising out of the content of the solicitation, will be deemed waived unless they are brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

a. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than **Thursday, July 16, 2015** to dsamhbusinessoperations@state.de.us. All questions will be consolidated into a single set of responses and posted on the State's website at www.bids.delaware.gov by the date of **Thursday, July 23, 2015**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Questions not submitted electronically shall be accompanied by a CD and questions shall be formatted in Microsoft Word.

14. State's Right to Reject Proposals

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

15. State's Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

16. State's Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C.* § 6986, the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware. No Vendor shall acquire an exclusive right to provide the State of Delaware with the professional services detailed in this RFP.

17. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

18. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at www.bids.delaware.gov . The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

19. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee. Proposals that contain exceptions which - individually or in the aggregate- have the effect of altering, limiting, or interfering with the State of Delaware's chosen and advertised method of service delivery may be deemed Non-Conforming.

20. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware AND the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of BOTH such events.

a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status following awarded vendor contract execution.

21. Cooperatives

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected for negotiations.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ 6981 and 6982. The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Division Director, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § 6982, to award a contract to the successful vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* §6986. Such selection will be based on the following criteria:
    - Needs of the Division
    - Funding availability

Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

Criteria	Weight
Applicant Experience and Expertise	20
Staffing & Capacity to Meet Requirements	15
Proposed Program Design/Service Delivery	50
Program Budget	15
Total	**100%**

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not make assumptions about a vendor's

capabilities. The Proposing Party should be as detailed as necessary in their proposal responses so as to address each of the evaluation criteria identified above.

3. Proposal Clarification

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to the Evaluation Team. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.
All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

D. Contract Terms and Conditions

1. Contract Use by Other Agencies

If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties. ***See*** **Title 29, Chapter 6904(e) Delaware Code.**

2. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 *Del. C.* Ch. 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

3. General Information

a. The term of the contract between the successful bidder and the State shall be for three (3) years with two (2) optional extensions for a period of one (1) year for each extension.

b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State

contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.

c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.

d. The State of Delaware's standard contract may be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.

e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.

f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

4. Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void and subject any party to such agreement or collusion to referral for investigation by any and all appropriate law enforcement agencies.

By responding, the vendor represents and warrants that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP or in connection with any vendor withholding its proposal and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal and subject any individual participating in such conduct to further investigation by any and all appropriate law enforcement agencies.

5. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting

from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul and/or cancel any contract resulting from this RFP 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.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

6. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

7. General Contract Terms

a. Independent Contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period.

b. Temporary Personnel are Not State Employees Unless and Until They are Hired

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual

temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

c. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department. If the successful vendor alleges it may legally operate in Delaware without such licensure, it will provide a letter from its legal counsel detailing the legal bases why such licensure is not required. Final determinations about licensure obligations shall remain the sole discretion of the State of Delaware.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

d. Indemnification

1. General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and

employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, whole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively ""Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

a. Procure the right for the State of Delaware to continue using the Product(s);
b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

e. Insurance

1. Vendor 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 vendor'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 vendor in their negligent performance under this contract.

2. The vendor 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 vendor is an independent contractor and is not an employee of the State of Delaware.

3. During the term of this contract, the vendor shall, at its own expense, also carry insurance minimum limits as follows:

a.	Commercial General Liability	$1,000,000 per occurrence/ $3,000,000 aggregate

And at least one of the following, as outlined below:

b.	Medical or Professional Liability	$1,000,000 per occurrence / $3,000,000 aggregate
c	Misc. Errors and Omissions	$1,000,000 per occurrence / $3,000,000 aggregate
d	Product Liability	$1,000,000 per occurrence / $3,000,000 aggregate

The successful vendor must carry (a) and at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage;

a.	Automotive Liability (Bodily Injury)	$100,000/$300,000
b.	Automotive Property Damage (to others)	$ 25,000

4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided prior to agency contact prior to any work being completed by the awarded vendor(s).
5. The State of Delaware shall not be named as an additional insured.
6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

f. Performance Requirements
The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

g. Vendor Emergency Response Point of Contact
The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

h. Warranty

The Vendor warrants that the professional services detailed in this RFP will be provided at or above the applicable and appropriate professional standard of care in the State of Delaware.

i. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

j. Optional Performance Incentives

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages. Vendors are encouraged to include performance incentive structures that are aimed at achieving optimal performance by the Vendor. Such proposed Performance Incentive structures may be accepted or rejected in the sole discretion of the State of Delaware.

k. Termination of Contract

The contract resulting from this RFP may be terminated as follows by **DIVISION OF SUBSTANCE ABUSE & MENTAL HEALTH**.

1. **Termination for Cause**: If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

   On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

2. **Termination Without Cause**: The State may terminate this Contract at any time for any reason or no reason by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
3. **Termination for Non-Appropriations**: In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the 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.

l. Non-discrimination

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section 711, will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

m. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

n. Vendor Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

o. Vendor Responsibility

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of **DIVISION OF SUBSTANCE ABUSE & MENTAL HEALTH.**

p. Personnel, Equipment and Services

1. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
2. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
3. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State.

q. Fair Background Check Practices

Pursuant to 29 Del. C. §6909B and effective November 4, 2014 the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. §711(g) for applicable established provisions.

r. Vendor Background Check Requirements

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts. Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at: https://desexoffender.dsp.delaware.gov/SexOffenderPublic/

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract, but may provide support or off-site premises service for contract vendors. Should an individual be identified and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

By Agency request, the Vendor(s) shall provide a list of all employees serving an awarded contract, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a contract award. A violation of this condition represents a violation of the contract terms and conditions, and may subject the Vendor to penalty, including contract cancellation for cause.

Individual contracts may require additional background checks and/or security clearance(s), depending on the nature of the services to be provided or locations accessed, but any other requirements shall be stated in the contract scope of work or be a matter of common law. The Vendor(s) shall be responsible for the background check requirements of any authorized Subcontractor providing service to the Agency's contract.

s. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

t. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

u. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

1. the laws of the State of Delaware;
2. the applicable portion of the Federal Civil Rights Act of 1964;
3. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
4. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

v. 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.

w. Scope of Agreement

If the scope of any provision of the contract is determined to be 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 provisions shall be curtailed only to the extent necessary to conform to the law.

x. Affirmation

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

y. Audit Access to Records

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

z. Other General Conditions

1. **Current Version** – "Packaged" application and system software shall be the most current version generally available as of the date of the physical installation of the software.
2. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer's latest design. All material and equipment offered shall be new and unused.
3. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.

4. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
5. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
6. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
7. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
8. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
9. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

E. RFP Miscellaneous Information

1. **No Press Releases or Public Disclosure**
The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

2. **Definitions of Requirements**
To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, will and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

3. **Production Environment Requirements**
The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

F. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2nd Tier Spend) Report
- Attachment 9 – Employing Delawareans Report
- Attachment 10 – Office of Supplier Diversity Application
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements
- Appendix C – Bidders Signature Form
- Appendix D – Certification Sheet
- Appendix E – Statement of Compliance Form
- Appendix F – DHSS Policy Memorandum #24
- Appendix G – Contract Boilerplate

IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, 5, 9 Appendices A-E must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting.

REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment 7) shall be furnished in an **Excel format and submitted electronically**, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to dsambusinesoperations@state.de.us . Submitted reports shall contain accurate descriptions of the products, goods or services procured, purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

Reporting is required by Executive Order.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, Men, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Men's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Attachment 8.

Accurate 2nd tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at vendorusage@state.de.us on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

Additional program required reporting is identified in **Appendix B**.

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 1

NO PROPOSAL REPLY FORM

Contract No. HSS-15-038

Contract Title: **REPRESENTATIVE PAYEE FOR ADULTS**

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

_____ 1. We do not wish to participate in the proposal process.

_____ 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:

_____

_____

_____ 3. We do not feel we can be competitive.

_____ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.

_____ 5. We do not wish to sell to the State. Our objections are:

_____

_____

_____ 6. We do not sell the items/services on which Proposals are requested.

_____ 7. Other:_____

_____

_____ _____
FIRM NAME SIGNATURE

_____ We wish to remain on the Vendor's List **for these goods or services**.

_____ We wish to be deleted from the Vendor's List **for these goods or services**.

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 2

CONTRACT NO.: HSS-15-038
CONTRACT TITLE: REPRESENTATIVE PAYEE FOR ADULTS
DEADLINE TO RESPOND: August 19, 2015 at 11:00 AM (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal**, and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, DIVISION OF SUBSTANCE ABUSE & MENTAL HEALTH

It is agreed by the undersigned Vendor that the signed delivery of this bid represents, subject to any express exceptions set forth at Attachment 3, the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, DIVISION OF SUBSTANCE ABUSE & MENTAL HEALTH.

COMPANY NAME _____Check one)

	Corporation
	Partnership
	Individual

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS_____

PHONE NUMBER _____ FAX NUMBER_____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE LICENSE NUMBER_____

COMPANY CLASSIFICATIONS: CERT. NO.: _____	Certification type(s)	Circle all that apply	
	Minority Business Enterprise (MBE)	Yes	No
	Woman Business Enterprise (WBE)	Yes	No
	Disadvantaged Business Enterprise (DBE)	Yes	No
	Veteran Owned Business Enterprise (VOBE)	Yes	No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	No

[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 3

Contract No. HSS-15-038
Contract Title: **REPRESENTATIVE PAYEE FOR ADULTS**

EXCEPTION FORM

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below.

☐ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP.

Paragraph # and page #	**Exceptions to Specifications, terms or conditions**	**Proposed Alternative**

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 4

Contract No. HSS-15-038
Contract Title: **REPRESENTATIVE PAYEE FOR ADULTS**

CONFIDENTIAL INFORMATION FORM

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 Del. C. ch. 100, Delaware Freedom of Information Act.

Confidentiality and Proprietary Information

Note: use additional pages as necessary.

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 5

Contract No. HSS-15-038
Contract Title: **REPRESENTATIVE PAYEE FOR ADULTS**

BUSINESS REFERENCES

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

1.

Contact Name & Title:	
Business Name:	
Address:	
Email:	
Phone # / Fax #:	
Current Vendor (YES or NO):	
Years Associated & Type of Work Performed:	

2.

Contact Name & Title:	
Business Name:	
Address:	
Email:	
Phone # / Fax #:	
Current Vendor (YES or NO):	
Years Associated & Type of Work Performed:	

3.

Contact Name & Title:	
Business Name:	
Address:	
Email:	
Phone # / Fax #:	
Current Vendor (YES or NO):	
Years Associated & Type of Work Performed:	

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 6

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. HSS-15-038	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Men Business Enterprise ☐ Yes ☐ No 4e. Minority Business Enterprise ☐ Yes ☐ No 4f. Disadvantaged Business Enterprise ☐ Yes ☐ No 4g. Veteran Owned Business Enterprise ☐ Yes ☐ No 4h. Service Disabled Veteran Owned Business Enterprise ☐ Yes ☐ No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		

6a. NAME OF PERSON SIGNING	7. BY (*Signature)*	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		

PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR

9a. NAME OF PERSON SIGNING	10. BY (*Signature*)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor

Attachment 7

STATE OF DELAWARE
MONTHLY USAGE REPORT

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware - Monthly Usage Report

Ver. 2 8/19/14

Contract Number / Title: _____

See Below for Transaction Detail

E-mail report to **vendorusage@state.de.us** no later than the 15th of each month for prior calendar month usage

Check here if there were no transactions for the reporting period ☐

Supplier Name: _____
Contact Name: _____
Contact Phone:

State Contract Item Sales $ -
Non-State Contract Item Sales $ -
Total Sales $ -

Report Start Date: _____
Report End Date: _____
Today's Date:

Customer Group	Customer Department, School District, or OTHER - Municipaltiy / Non-Profit	Customer Division (State Agency Section name, School name, Municipality / Non-Profit name)	Item Description	Awarded Contract Item YES/NO	Contract Item Number	Unit of Measure	Qty	Contract Proposal Price/Rate	Total Spend (Qty x Contract Proposal Price/Rate)

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to dsamhbusinesoperations@state.de.us. It shall contain the six-digit department and organization code for each agency and school district.

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 8

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																	
Subcontracting (2nd tier) Quarterly Report																	
Prime Name:							**Report Start Date:**										
Contract Name/Number							**Report End Date:**										
Contact Name:							**Today's Date:**										
Contact Phone:							*Minimum Required		Requested detail								
Vendor Name*	**Vendor TaxID***	**Contract Name/ Number***	**Vendor Contact Name ***	**Vendor Contact Phone ***	**Report Start Date ***	**Report End Date ***	**Amount Paid to Subcontractor***	**Work Performed by Subcontractor UNSPSC**	**M/WBE Certifying Agency**	**Veteran /Service Disabled Veteran Certifying Agency**	**2nd tier Supplier Name**	**2nd tier Supplier Address**	**2nd tier Supplier Phone Number**	**2nd tier Supplier email**	**Description of Work Performed**	**2nd tier Supplier Tax Id**

Note: A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format, and submitted to the following email address: vendorusage@state.de.us

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Attachment 9

Contract No. HSS-15-038
Contract Title: **REPRESENTATIVE PAYEE FOR ADULTS**

EMPLOYING DELAWAREANS REPORT

As required by House Bill # 410 (Bond Bill) of the 146th General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: _____

2. Number and percentage of such employees who are bona fide legal residents of Delaware: _____

   Percentage of such employees who are bona fide legal residents of Delaware: _____

3. Total number of employees of the bidder: _____

4. Total percentage of employees who are bona fide resident of Delaware: _____

If subcontractors are to be used:

1. Number of employees who are residents of Delaware: _____

2. Percentage of employees who are residents of Delaware: _____

"Bona fide legal resident of this State" shall mean any resident who has established residence of at least 90 days in the State.

Attachment 10

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

State of Delaware

Office of Supplier Diversity
Certification Application

The most recent application can be downloaded from the following site:
http://gss.omb.delaware.gov/osd/certify.shtml

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, Men, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.

Complete application and mail, email or fax to:

Office of Supplier Diversity (OSD)
100 Enterprise Place, Suite 4
Dover, DE 19904-8202
Telephone: (302) 857-4554 Fax: (302) 677-7086
Email: osd@state.de.us
Web site: http://gss.omb.delaware.gov/osd/index.shtml

APPENDIX A
MINIMUM MANDATORY SUBMISSION REQUIREMENTS

Vendors shall provide proposal packages in the following formats:

1. Ten (10) paper copies of the vendor proposal paperwork. **One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.**

2. Three (3) electronic copies of the vendor proposal saved to CD media disk. Copy of electronic price file shall be a separate file from all other files on the electronic copy. (If Agency has requested multiple electronic copies, each electronic copy must be on a separate computer disk or media).

Each vendor solicitation response should contain at a minimum the following information:

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.

2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.

3. Pricing as identified in the solicitation

4. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). Bid marked "ORIGINAL", **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK.** All other copies may have reproduced or copied signatures – Form must be included.

5. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.

6. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.

7. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.

8. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor – only provide if applicable.

9. One (1) complete Employing Delawareans Report (See Attachment 9)

10. One (1) complete OSD application (See link on Attachment 10) – only provide if applicable

11. Applicant must describe how it will perform the services as described in **Appendix B**.

The items listed above provide the basis for evaluating each vendor's proposal. **Failure to provide all appropriate information may deem the submitting vendor as "non-responsive" and exclude the vendor from further consideration.** If an item listed above is not applicable to your company or proposal, please make note in your submission package.

BUSINESS PROPOSAL REQUIREMENTS

The proposed annual operating budget is to capture the requirements of the successful vendor in meeting the service requirements of the program. The sample line item budget to be submitted as part of this RFP is to reflect the proposed operational costs of providing these services and will not be the basis of reimbursement in the awarded contract. The electronic version will also be published on the website as part of the question and answers addendum.

Vendor is required to submit technology costs that the State will be directly or indirectly responsible for as part of this contract. The vendor will break down technology costs into three categories for implementation and the same three categories for out-year costs:

1. Hardware
2. Software
3. Technical staffing

For vendor-hosted websites, hosting costs can be allocated to the above categories at the discretion of the vendor.

The Business Proposals and all budget information must be presented separate from the Technical Proposal.

Applicant will demonstrate corporate capability:

Financial stability as determined by review of financial information provided by the Vendor; perceived ability to start up and manage the program in the time required using the staff, structure and phase in required in the RFP. Financial stability should be demonstrated through production of balance sheets and income statements or other generally accepted business record for the last 3 years that includes the following: the Vendor's Earnings before Interest & Taxes, Total Assets, Net Sales, Market Value of Equity, Total Liabilities, Current Assets, Current Liabilities, and Retained Earnings.

In addition to financial information, discuss any corporate reorganization or restructuring that has occurred within the last three years and discuss how the restructuring will impact the Vendor's ability to provide services proposed. The vendor must disclose the existence of any related entities (sharing corporate structure or principal officers) doing business in the field of correctional health care. The DSAMH reserves the right to terminate the contract, based upon merger or acquisition of the Vendor, during the course of the contract. The vendor must include a description of any current or anticipated business or financial obligations, which will coincide with the term of this contract.

APPENDIX B
SCOPE OF WORK AND TECHNICAL REQUIREMENTS

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.

The expected length of service for consumers in the representative payee program shall be up to two (2) years. Providers shall recognize consumers who are not benefitting from this service and refer them to alternative supports within two (2) years.

When practicable, the provider shall have an office in the community served with established office hours and is accessible to consumers. The provider shall identify "open" office hours, so that consumers are able to talk with the provider, without an appointment, to discuss emergent issues that may arise. The office setting shall be conducive to meeting with case managers and consumers to discuss representative payee goals and objectives.

If not practicable to have an office, the provider shall have the capability to use a DSAMH site that is accessible to consumers.

The provider shall have a posted telephone number for consumers to call, should an emergency arise and they are unable to reach their designated representative payee worker. This telephone number shall be answered by an authorized individual of the provider, during regular work hours, Monday through Friday.

The provider shall have the ability to process and distribute payments within a 24-hour period for emergency purposes.

If there should be an occasion, when a designated payment/check was not processed by the provider as requested, the provider shall send a written communication to the recipient of the check/fund, informing them of the delay, how it was not caused by the consumer, and the steps the provider shall take to prevent a similar situation from re-occurring in the future. Copies of the letter shall be provided to the consumer and the case manager.

<u>Scope of Services</u>

1. Organizational representative payees spend benefits to help create a stable living environment for the beneficiary and ensure that the basic current needs care are met.

    i. Consumers shall receive services in a manner compatible with their cultural health benefits, practices, and preferred language.
    ii. Have a policy that emphasizes a welcoming, empathic and integrated approach to working with individuals with co-occurring substance abuse and mental illness.
    iii. To the extent possible, the successful proposing party shall:
    iv.
        1. Help motivate a beneficiary to work toward more independent living;

2. Support a beneficiary in their therapy and rehabilitation; and

3. Encourage the beneficiary to improve their relationship with family members.

2. The provider shall provide the Division's Quality Management program with a written record of sentinel events, incidents, grievances, and appeals and efforts to address the situation and improve services on site.

3. The provider is required to comply with all Health Insurance Portability and Accountability Act of 1996 ("HIPAA") requirements. The provider shall describe how they protect confidential information. The provider shall not use or disclose patient health information ("PHI") in any manner that is not in full compliance with HIPAA regulations or with the laws of the State of Delaware. The provider shall maintain safeguards, as necessary, to ensure that PHI is not used or disclosed except as provided by the contract or by law. The provider shall not use or further disclose PHI for any purpose other than the specific purposes stated in Division contracts or as provided by law and shall immediately report to Division any use of disclosure of PHI.

4. Written consumer consent shall be obtained for individuals and services funded by the Division including:

i. Consent to release information by Division funded service providers as needed for continuity of care or for transition to another service providers, including after care services;
ii. Consent for claims to be submitted, on behalf of the consumer, for reimbursement or third party billing;
iii. Other consent documents as needed or as may be required by federal or State of Delaware law or regulation.

5. Organizational representative payees must:

i. Assist primary treatment provider OR develop an initial budget with each consumer upon starting the representative payee program. This shall establish a guide which will allow consumers to practice good money management skills. Budgets shall be re-visited and adjusted each time there is a change in each consumer's financial situation (example: rent increase/decrease, benefit increase/decrease, etc.)

ii. Develop and implement a procedure that will allow for the timely disbursement of funds for expenses that each consumer's treatment team has determined to be urgent.

iii. Conduct routine consumer satisfaction surveys for representative payee program and making ongoing program modifications. The provider shall

iv. Meet with consumer regularly based on the needs of the beneficiary.

1. Create and review established budget with beneficiary, explain expenses, and advise of any large retroactive payments.

2. Help beneficiary access needed services and complete any applications necessary.
3. Assist beneficiary with receiving medical treatment, as needed.
4. Negotiate with landlords and others as well as involve beneficiary in financial decisions.
5. Help beneficiaries file income tax returns.

v. Keep written records of all payments received from the United States Social Security Administration and how they are spent and/or saved.

vi. For consumers receiving Supplemental Security Income, be aware of and track any other income or resources that each consumer has. This is important as other income/resources may impact each consumer's eligibility and/or payments. The provider shall be required to use the standardized RP Report of Change of SSA/SSI Recipient Ford, rev. 08/09, provided in Section 5, Attachment J.

vii. Provide benefit information to pertinent Division providers, social service agencies, and medical facilities that serve each consumer.

viii. Provide money management services that shall include, but are not limited to, the payment of rent, utilities, transportation, food, and clothing for each consumer as well as assistance with budgeting skills and providing money on a daily or weekly basis for each consumer's personal use.

Use the payments for the beneficiary's direct current needs and save the remainder. Immediately report any overpayment – defined as any amount of money received for any period of time that exceeds the total amount of money that should have been paid. If current maintenance needs are met, then any and all past debts must be satisfied (excluding SS or SSI overpayment, IRS levy for income tax, and garnishments for child support or alimony).

Current maintenance needs include (in order of priority):

1. Food
2. Housing
3. Medical Care
4. Clothing
5. Personal comfort items
6. Reasonably foreseen needs

Institutions may use part of the funds for the support of the beneficiary's dependent spouse, child, and/or parent.

ix. Negotiate with financial institution to provide checking accounts with no or minimal service charges, if needed.

x. Establish a line of communication with the local United States Social Security Administration office.

xi. Complete and file written reports accounting for the use of funds as outlined by the United States Social Security Administration. The SSA Representative Payee Accounting Report. Report available at the following link: http://www.ssa.gov/payee/form/ and can be filed as hard copy or completed online electronically. Keep written records of savings, deposits, and expenses for each beneficiary served.

If completed online, it must be completed in its entirety. Your information will not be saved if you do not complete your online report. However, you may always log-in in the future and start your report from the beginning.

After you have completed your accounting update, you will be given a confirmation number for your reference. This information will be saved for 30 days for your review.

xii. Notify the United States Social Security Administration and the Division when the beneficiary requests change of payee and/or is no longer organizations responsibility (including death, divorce/annulment, and change in residency, etc.) or any changes in circumstances that would affect performance as representative payee or continue as representative payee. In addition, return any conserved funds if and when such funds are no longer properly payable to a beneficiary or payee. Recommend alternate representative payee options to any beneficiary if your organization can no longer provide such services and ensure the smooth and seamless transition to any subsequent representative payee.

6. Applicant Organization Eligibility and Requirements

i. Proof of Organizational Rep Payee status

ii. Contact local Social Security Administration (SSA) to apply.

a. Face to Face Interview.

2. SSA selects/approves organizational rep payee based on relationship, qualifications, ability/capacity to carryout duties, and willingness to comply with liability and reporting requirements.

iii. Proof that employee(s) are appropriately bonded and/or insured as required by law or regulation.

iv. Vendor entity must be insured and must not have any active exclusions of debarment.

v. Provide administrative capacity manual indicating:

1. Indicate physical location in each county
2. Allow clients who demonstrated aptitude to utilize reloadable debit cards via collective accounts or other.
3. Measures to deter check fraud and separation of duties.
   a. Timetable and procedure for:
      1. Logging, depositing, and securing electronic and paper checks, and
      2. Writing and signing checks for approved disbursements
   b. Maintaining and reconciling ledgers and bank records.
      1. Document the established account clearly indicates organization is acting in an administrative capacity for funds belonging to client, not organization.
   c. Beneficiary requests for goods and services
   d. Reporting fraud, waste, or abuse to SSA and DSAMH including embezzlement, forged signatures, theft, or other unlawful conduct.

4. Adequate internal review and supervision of accounting functions and protecting beneficiary bank accounts.

Administrative Requirements

A. There will be a single point of accountability for each consumer entering the system that will be responsible for the continuity of communication, care, and follow-up regardless of service, setting, or provider. In most cases, the single point of accountability will be the Division designated case manager.

B. Division consumer s shall not be charged finance charges, co-payments for services, or no-show fees. Consumers shall be informed that they cannot be terminated by the provider for non-payment of co-payments, finance charges, no-show fees, and non-covered services or for receipt of services from unauthorized provider employees or providers.

C. The Submission of quality management activities report is required. The provider shall provide the following reports and information:
   a. Annual consumer satisfaction survey report;
   b. Written notification of any Quality Management Program (if written, Program required) modifications;
   c. Senior personnel changes, including professional staff/consultants, within 30 calendar days of change;
   d. Annual Quality Management Program evaluation (if written, Quality Management Program required);
   e. Written request for approval of any delegation of quality management activities to subcontractors and providers;
   f. Written notice to the Division of consumer discharge of services or change in level of care within one (1) working business day of such action

Quality Assurance and Evaluation Specifications

The purpose of quality management is to monitor, evaluate, and improve the results of the provider's services in an ongoing manner. Quality care includes, but is not limited to:

1. Provisions of services in a timely manner with reasonable waiting times;
2. Provision of services in a manner which is sensitive to the cultural differences of consumers;
3. Provision of services in a manner which is accessible for consumers;
4. Opportunities for consumers to participate in decisions regarding their care;
5. An emphasis on recovery;
6. Appropriate use of services in the provision of care;
7. Appropriate use of best practices and evidence-based practices;
8. Appropriate documentation, in accordance with defined standards;
9. Monitoring and improving clinical outcomes and enhancing quality of life;
10. Consumer satisfaction;
11. User friendly grievance procedures which resolve issues in a timely manner; and
12. Upholding consumer rights.

Quality Improvement

All proposals shall include a formal plan for identifying, evaluating and correcting deficiencies in the quality and quantity of services to be provided under any resulting contract arising out of this RFP. Responsive proposals shall include a specific section entitled "Quality Improvement" which shall include proposed contractor "performance targets; how these will be evaluated, tracked and reported; and include an understanding that DSAMH will be involved in setting up these performance targets. The requirement contained in this paragraph is an essential and material term of any proposal. The failure to include a "quality Improvement" section containing the above minimum core requirements shall be grounds to deem such proposals non-responsive. Vendors selected for contract negotiations should be aware that DHSS intends to include a robust "Quality Improvement" methodology into any contact resulting from this RFP. DHSS reserves the right to accept or reject, in whole or in part, or to negotiate any port of the proposal's "Quality Improvement" section during the negotiation phase of this matter. DHSS also reserves the right to attach financial incentives for compliance and financial penalties for non-compliance with the terms and requirements of the "Quality Improvement" section of any contract arising out of this RFP.

Implementation Plan

Applicants must submit an Implementation Plan in chart format with timelines for completion of each activity. The plan must cover start up through program implementation activities, including hiring of key staff.

Geographic Areas to Be Served

Proposers must clearly and specifically describe the location(s) of the site(s) where they will offer the services for which they have applied.

Language Accessibility

The provider must demonstrate that they have access to the requisite language resources for individuals assigned to their program who do not speak English.

Capacity

Proposers must specify how many beneficiaries they are proposing to serve and affirmatively state that the Proposer has the resources to effectively serve its stated capacity .

Staffing Requirements

A. Staff providing representative payee services shall, at a minimum, have:
    a. a high school diploma;
    b. 1.5 years of experience working in the human services field; and
    c. 1.5 years of bookkeeping or accounting experience.

However, additional experience is preferred.

B. Provider shall ensure that staff receives supervision appropriate to their level of experience working with individuals with mental illness. Supervision shall be provided by a Mental Health Professional and by appropriately experienced bookkeeping/accounting staff and should target both clinical awareness and growth as well as review of accounting and bookkeeping practices.

C. The provider shall ensure and document that its personnel receive appropriate education and training in techniques and modalities relevant to their service activity for the treatment and rehabilitation of individuals with mental illness, following the organization's policies and procedures.

D. The provider shall provide continued education and training for the representative payee staff at least semi-annually to maintain and upgrade their skills. The content of the education and training shall be based on a strategic training plan to upgrade the educational and professional qualifications of its staff and shall be developed in conjunction with the Division.

E. The provider shall ensure that all of its personnel attend trainings sponsored or required by the Division, as appropriate to the service(s) they are providing. Training shall include compliance with Division requirements for fraud and abuse prevention.

1. Resumes of Key Staff
   - A current resume for each staff member must be submitted and retained on file, if known to the applicant at the time of response to the RFP, must be included.
   - Designate a project manager as the primary point of contact with DSAMH;

2. Screening and Hiring Procedures

   The applicant must provide guidelines to be used in staff screening and hiring procedures. Measures adequate to screen job applicants to determine history of patient/client abuse/neglect (must comply with 29 Del. C. Section 708 and 11 Del. C. Section 8564) must be described.

3. Staff Training/Orientation and Development

   A staff training and/or orientation plan must be submitted within 60 days of Notice of Award for applicable to all staff who will be assigned to the program. The plan must be updated annually.

   The Department reserves the right to require training. DSAMH will identify all relevant and mandatory training during negotiations with the successful bidder.

APPENDIX C:

BIDDERS SIGNATURE FORM

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

DELAWARE HEALTH AND SOCIAL SERVICES
REQUEST FOR PROPOSAL

BIDDERS SIGNATURE FORM

NAME OF BIDDER:_____
SIGNATURE OF AUTHORIZED PERSON:_____
TYPE IN NAME OF AUTHORIZED PERSON:_____
TITLE OF AUTHORIZED PERSON:_____
STREET NAME AND NUMBER:_____
CITY, STATE, & ZIP CODE:_____
CONTACT PERSON:_____
TELEPHONE NUMBER:_____
FAX NUMBER:_____
DATE:_____
BIDDER'S FEDERAL EMPLOYERS IDENTIFICATION NUMBER:_____

THE FOLLOWING MUST BE COMPLETED BY THE VENDOR:

AS CONSIDERATION FOR THE AWARD AND EXECUTION BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES OF THIS CONTRACT, THE (COMPANY NAME)_____ HEREBY GRANTS, CONVEYS, SELLS, ASSIGNS, AND TRANSFERS TO THE STATE OF DELAWARE ALL OF ITS RIGHTS, TITLE AND INTEREST IN AND TO ALL KNOWN OR UNKNOWN CAUSES OF ACTION IT PRESENTLY HAS OR MAY NOW HEREAFTER ACQUIRE UNDER THE ANTITRUST LAWS OF THE UNITED STATES AND THE STATE OF DELAWARE, RELATING THE PARTICULAR GOODS OR SERVICES PURCHASED OR ACQUIRED BY THE DELAWARE HEALTH AND SOCIAL SERVICES DEPARTMENT, PURSUANT TO THIS CONTRACT.

APPENDIX D:

CERTIFICATION SHEET

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

DELAWARE HEALTH AND SOCIAL SERVICES
REQUEST FOR PROPOSAL

CERTIFICATION SHEET

As the official representative for the proposer, I certify on behalf of the agency that:

a. They are a regular dealer in the services being procured.

b. They have the ability to fulfill all requirements specified for development within this RFP.

c. They have independently determined their prices.

d. They are accurately representing their type of business and affiliations.

e. They will secure a Delaware Business License.

f. They have acknowledged that no contingency fees have been paid to obtain award of this contract.

g. The Prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor;

h. Unless otherwise required by Law, the prices which have been quoted in this offer have not been knowingly disclosed by the contractor and prior to the award in the case of a negotiated procurement, directly or indirectly to any other contractor or to any competitor; and

i. No attempt has been made or will be made by the contractor in part to other persons or firm to submit or not to submit an offer for the purpose of restricting competition.

j. They have not employed or retained any company or person (other than a full-time bona fide employee working solely for the contractor) to solicit or secure this contract, and they have not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the contractor) any fee, commission percentage or brokerage fee contingent upon or resulting from the award of this contract.

k. They (check one) operate ___an individual; _____a Partnership ____a non-profit (501 C-3) organization; _____a not-for-profit organization; or _____for profit corporation, incorporated under the laws of the State of _____.

l. The referenced offerer has neither directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid submitted this date to Delaware Health and Social Services.

m. The referenced bidder agrees that the signed delivery of this bid represents the bidder's acceptance of the terms and conditions of this invitation to bid including all Specifications and special provisions.

n. They (check one): _____are; _____are not owned or controlled by a parent company. If owned or controlled by a parent company, enter name and address of parent company:

_____
_____
_____
_____

Violations and Penalties:

Each contract entered into by an agency for professional services shall contain a prohibition against contingency fees as follows:

1. The firm offering professional services swears that it has not employed or retained any company or person working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of its employees in the professional service procurement process.

2. The firm offering the professional services has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this agreement; and

3. For the violation of this provision, the agency shall have the right to terminate the agreement 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.

The following conditions are understood and agreed to:

a. No charges, other than those specified in the cost proposal, are to be levied upon the State as a result of a contract.

b. The State will have exclusive ownership of all products of this contract unless mutually agreed to in writing at the time a binding contract is executed.

_____ _____
Date Signature & Title of Official Representative

_____
Type Name of Official Representative

APPENDIX E

STATEMENTS OF COMPLIANCE FORM

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

DELAWARE HEALTH AND SOCIAL SERVICES
REQUEST FOR PROPOSAL

STATEMENTS OF COMPLIANCE FORM

As the official representative for the contractor, I certify on behalf of the agency that_____ (Company Name) will comply with all Federal and Delaware laws and regulations pertaining to equal employment opportunity and affirmative action. In addition, compliance will be assured in regard to Federal and Delaware laws and regulations relating to confidentiality and individual and family privacy in the collection and reporting of data.

Authorized Signature:_____

Title:_____

Date:_____

APPENDIX F

Safeguarding Management of Resident/Client Funds

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

Department of Health and Social Services

DHSS Policy Memorandum 24 **August 6, 2002**
Subject: Safeguarding Management of Resident/Client Funds

I. PURPOSE

To establish guidelines that provide accountability for property and the management, receipt, and disbursement of each resident/client's funds. Furthermore, this policy should provide direction to the respective divisions for the development and implementation of internal policies on this subject; however; no part of this departmental policy may be voided.

II. POLICY

In an effort to support resident/client independence and self management, the Department of Health and Social Services (DHSS) shall safeguard and help manage the personal property and finances of those residents/clients housed and cared for in state operated programs or programs operated by a contracted provider.

III. APPLICABILITY

This policy applies to all individuals receiving residential, day program or outpatient services from the Department of Health and Social Services or contracted provider.

IV. ENFORCEMENT

Any person involved in misappropriations of a residents/clients funds or property shall be subject to disciplinary action within DHSS. In addition, the person is subject to criminal prosecution in accordance with Title 11 Del. C. § 841(c)(2)(3)(a)(b).

V. DEFINITIONS

A. Co-mingling of Individual Funds: The blending of the funds of an individual receiving services with the funds of any DHSS employee/agency. Co-mingling is strictly prohibited.
B. Community Bank Account: An account established at a financial institution in the community for DHSS resident/client who receive residential, day program or outpatient services.
C. Department: Refers to Delaware Health and Social Services herein known as "DHSS", as an entity including all Divisions and the Office of the Secretary.

D. Division: An agency within the Delaware of Health and Social Services.
E. Division Management: Employees who exercise executive, administrative, and supervisory direction within the division.
F. Individual: Resident/Client
G. Medicaid: A federal assistance program that is administered by the states. Eligibility is based upon financial need, disability or age. Components of the program include:
   1. Health insurance signified by the Medicaid card, that includes hospital and medical coverage based upon Supplemental Security Income benefits, vendor payment or Home and Community based waiver services eligibility.
   2. Vendor payments are monthly payments to skilled and intermediate care facilities meeting Medicaid program standards.
   3. Home and community based Medicaid waiver services.
H. Misappropriation of Property or Funds: Theft of an individual's money or property; use of an individual's money or property without permission of the individual, guardian or representative payee; acceptance by staff of an individual's money or property regardless of permission; and mishandling of an individual's money or property.
I. Organizational Representative Payee: The organization authorized by the payer of the benefit to receive benefit payments on behalf of the individual receiving services. Division management shall be responsible for providing supervision and direction in the management of benefit programs and funds.
J. Personal Property: Property other than real property, consisting of things temporary or moveable.
K. Personal Spending Record: An approved form/system used to record in-house funds maintained in the provider's home or a residential placement for the individual to use. The form tracks deposits and withdrawals to the in-house account, including the source of deposits and reasons for withdrawals.
L. Provider: A person or organization under contract and certified with any division within the DHSS as having met the standards set forth by the division and any other licensing requirements.
M. Resources: The financial assets of an individual including:
   1. Earned Income: The income received from gross wages or net earnings from employment.
   2. Unearned Income: the income received from sources that include, but are not limited to: Social Security, Supplemental Security Income, Workers' or Veterans' compensation, support and maintenance in kind, annuities, rent, interests, trusts, stocks, pensions, dividends, bonds, and/or mutual funds.
N. Social Security Administration (SSA): The federal agency that administers and reviews the eligibility and uses of Social Security and Supplemental Security Income benefits.

VI. RESPONSIBILITY

A. Procedure:

If an employee of DHSS or contracted provider has been accused of misappropriation of resident/client funds or property, the employee shall be removed from direct contact with the resident/client. The division shall begin a detailed investigation in accordance with the Department Policy Memorandum #46 and initiate a criminal investigation by contacting the appropriate law enforcement agencies. The determination as to whether to prosecute shall be made by the law enforcement agencies.

The division director will provide leadership and assume overall responsibility for assuring policy observance.

Each division that is responsible for resident/client care shall develop or review existing division policy that discusses the day to day management of the resident's/client's monies, and inventory control of resident's/client's personal property. The standards set forth in section VII below shall be implemented into the division policy. A copy of the Division's policy should be forwarded to the Chief Policy Advisor, in the Office of the Secretary and the Director of the Division of Management Services (DMS).

B. Reimbursement:

The division/provider shall be responsible for ensuring reimbursement to any DHSS resident/client who receives residential, day program or outpatient services for any missing, stolen, and/or unaccounted funds and/or property that have been determined to be misappropriated. Reimbursement shall be made after a thorough investigation and documented findings. The investigation and findings shall be completed within ninety (90) days after the reporting of the alleged misappropriation to division management. A report of such findings, along with reimbursement documentation, shall be forwarded to MS.

The division director shall communicate to the Office of the Attorney General when reimbursement has been made to the resident/client by the state. If the person is found criminally responsible for the theft, any court ordered restitution should be paid to the Department.

The division director shall consult the appropriate personnel if a misappropriation of funds or property by one resident/client against another resident/client is believed to have occurred. Reimbursement to the resident/client shall be made, and restitution to the state will occur if appropriate.

VII. **STANDARDS**:

- **General**

A. To promote self-sufficiency, the division shall advocate and recognize the right of each individual to manage his/her own money and finances. Each individual's Interdisciplinary Team will assess the individual's capabilities to manage his/her own benefits, money and property.

B. The division shall offer and provide organizational representative payee services under the following conditions:

1. There is evidence that the DHSS resident/client who receives residential, supported-living or outpatient service is not capable of managing or directing the management of benefit payments in his or her own best interest, or;
2. The individual has a legal guardian and the guardian chooses to relinquish the responsibility to the respective Division.

C. Once selected as the organizational representative payee, the division will provide assistance and support to individuals unable to manage their own finances.

D. The division management shall reserve the right to terminate the responsibility of serving as the organizational representative payee for the following reasons:

1. Intentional falsification of information regarding all resources and assets by the resident/client receiving services, a family member acting on the individual's behalf, an advocate, or guardian.
2. Refusal by the resident/client to provide financial information or evidence when requested by the department, Social Security Administration, or Medicaid. Financial information or evidence for individuals ages 18 years or older shall be limited to resources and/or assets established under the individual's social security number.
3. The resident/client is no longer receiving benefits or has been discharged from the division.

Note- Termination of such responsibility releases the division from future claims arising from such resident/client.

E. A resident's/client's funds shall not be expended for goods and services that the state/provider is required to provide according to the Social Security Administration and Medicaid guidelines. The division shall not spend a resident's/client's funds in a way that would leave him or her without necessary items or services (housing, food, clothing, medical care).

F. Employees shall not borrow from or lend money to an individual receiving services. Employees are also prohibited from co-owning

and or/ co-signing with the resident/client. Only in circumstances where the division has been designated the organizational representative payee shall the employee act as a custodian of any bank account of an individual receiving services.

G. Employee shall not sell goods and/or services to an individual receiving services from the Division.

- **Audits:**
  - . On a quarterly basis, the division shall perform random audits of at least 15% of their resident's/client's personal spending records in which the division serves as the representative payee. The results of the audits will be summarized and reviewed with the division director and facility director quarterly.
  - A. Divisions shall receive audits from the Social Security Administration, State Auditor's Office, and the Division of Management Services (DMS), Revenue Management Unit. Divisions shall be responsible for completing an annual accounting of each resident/client's benefits via the filing of various reports.
  - B. Contract provider agencies shall be required to conduct an independent annual professional audit of the resident/client funds that shall be submitted to the division prior to the end of each fiscal year. Audit findings shall be reviewed with division management.
  - C. Contract provider agencies shall be required to develop and submit internal policies and procedures regarding resident/client funds management to the division management or said designee. The policies/procedures submitted shall meet the standards within this policy.
- **Resident/Client Accounts**
  - . The division shall establish and maintain a system that assures a full and complete accounting of each resident's/client's personal funds entrusted to the organization/agency and precludes any co-mingling of resident's/client's funds with the division's funds or with the funds of any DHSS employee.
  - A. If appropriate, the division shall ensure that guidelines are in place for residents /clients residing in community living arrangements and participating in a division's organizational representative payee program to establish community bank accounts. The accounts shall be opened within 30 days of residential placement. The account will be titled to the individual receiving services (when appropriate) and generate a monthly statement, which includes cancelled checks (if applicable).
  - B. In cases where financial institutions will not permit the resident/client to open an account in his/her own name due to the individual's inability to contract for business, the division will review the resident/clients circumstances on a case by case basis to best determine the resident's/client's needs.

C. Providers shall not be permitted to close a resident's/client's community bank account without the written approval of the authorized division management. Management shall document the approval to close an account.

- **Monitoring/Safeguarding Resident/Client Funds:**
  - . Division management shall be responsible for coordinating and monitoring oversight of all financial matters for the resident/client for whom the division/provider have been designated as representative payee.
  - A. Division management shall be responsible for establishing guidelines for expenditure authorization and approval, including conducting quarterly reviews. Any discrepancies exceeding $100 per incident shall be reported to the DMS Budget & Program Analysis Unit.

VIII. **IMPLEMENTATION**

. This revised policy memorandum is effective August 6, 2002.

A. This Department Policy supersedes all other polices, directives, or rules related to the subject.

B. Divisions shall take the necessary action to create their own policy on this subject and review for possible changes on an annual basis.

Vincent P. Meconi August 6, 2002
Vincent P. Meconi, Secretary

APPENDIX G

Contract Boilerplate

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

DELAWARE HEALTH
AND SOCIAL SERVICES

PROFESSIONAL SERVICES AGREEMENT

This Agreement (hereafter the "Agreement") is entered into as of _____, 20__(Effective Date) and will end on _____, 20__, by and between the State of Delaware, Department of Health and Social Services, Division of Substance Abuse & Mental Health, (hereafter "DSAMH" or "Delaware"), and CONTRACTOR NAME, a _____corporation, with offices at _____ (hereafter the "Contractor" and collectively the "Parties").

WHEREAS, Delaware desires to obtain certain services to _____; and _____.

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

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

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

1. **Services.**

   1.1. CONTRACTOR shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

   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: (1) this Agreement (including any amendments or modifications thereto); (2) Delaware's request for proposals; (3) Divisional Requirements; (4) Scope of work (services Description); (5) Contract Budget; and (6) CONTRACTOR's response to the request for proposals. 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 CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

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

2. **Payment for Services and Expenses.**

2.1. The term of this Agreement shall be from _____, 20__ through _____, 20____. This Agreement may be renewed by mutual written consent of the Parties for ____ additional _____ year periods.

2.2. Delaware will pay CONTRACTOR for the performance of services described in Appendix ___, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix ___.

2.3. Delaware's obligation to pay CONTRACTOR for the performance of services described in Appendix ___, Statement of Work will not exceed the fixed fee amount of $_____. It is expressly understood that the work defined in the Appendices to this Agreement must be completed by CONTRACTOR and it shall be CONTRACTOR'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 CONTRACTOR.

2.4. 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. 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 CONTRACTOR to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to CONTRACTOR, VENDOR ADDRESS.

2.5. 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.

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

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

2.8. Invoices shall be submitted to:

3. **Responsibilities of CONTRACTOR.**

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

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, CONTRACTOR shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. CONTRACTOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by CONTRACTOR's failure to ensure compliance with DTI standards.

3.2. It shall be the duty of the CONTRACTOR to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. CONTRACTOR will not produce a work product that violates or infringes on any copyright or patent rights. CONTRACTOR shall, without additional compensation, correct or revise any errors or omissions in its work products.

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

3.4. CONTRACTOR shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by CONTRACTOR's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project Team	Title	% of Project Involvement

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

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

3.7. CONTRACTOR agrees that its officers and employees will cooperate with 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. 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.

3.9. 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.

3.10. CONTRACTOR agrees to assist and provide full and complete cooperation in order to support Delaware in coming into substantial compliance with all terms of the Settlement Agreement in the matter *United States v. State of Delaware*, 11-591-LPS until the State is released from all obligations thereunder. Such assistance and cooperation shall include, but not be limited to, the following duties:

3.10.1 Timely production of data and documents necessary to gauge the State's level of compliance with the Settlement Agreement,

3.10.2 The provision of technical assistance with regard to any requirement of the Settlement Agreement that relates to the delivery of services pursuant to this Agreement,

3.10.3 Timely communicate with and respond to Delaware's Settlement Coordinator, and

3.10.4 Refrain from restructuring or limiting its resources in a manner which is inconsistent with the goals and requirements of the Settlement Agreement without the express written consent of Delaware.

3.11 All invoices, reports, documents provided in response to an audit, and any documentation provided to Delaware pursuant to any contractual obligation, including any chart or compilation of data, report, or other document produced by the CONTRACTOR shall contain the following 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 Delaware shall be certified only by the CONRACTORs project manager assigned to this Agreement.3.12 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. **Time Schedule.**

4.1. A project schedule is included in Appendix A.

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 CONTRACTOR fails to complete the project or any phase thereof within the time specified in the Agreement, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix A.

5. **State Responsibilities.**

5.1. In connection with CONTRACTOR'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 CONTRACTOR in the performance of services under this Agreement and will be available for consultation with CONTRACTOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3. The services performed by CONTRACTOR 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, or third-party quality review organizations and shall so inform CONTRACTOR 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 CONTRACTOR. It is understood that Delaware's representatives' review comments do not relieve CONTRACTOR 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 CONTRACTOR as it may request, any non-privileged 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.

CONTRACTOR shall return any original data provided by Delaware.

5.6. Delaware shall assist CONTRACTOR in obtaining non-privileged data or 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. CONTRACTOR 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 CONTRACTOR's name, either express or implied, in any of its advertising or sales materials. CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2. 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.

6.3. In no event shall CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of CONTRACTOR 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. Delaware shall have the exclusive discretion to determine whether information requested pursuant to its Freedom of Information act is deemed "public records" as defined therein.

8. **Warranty.**

8.1. 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.

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 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.

9. **Indemnification.**

9.1. CONTRACTOR shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:

a. the negligence or other wrongful conduct of the CONTRACTOR, its agents or employees, or

b. CONTRACTOR's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that

i. CONTRACTOR shall have been notified promptly in writing by 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.

9.2. If Delaware promptly notifies CONTRACTOR in writing of a third party claim against Delaware that any service or 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.

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

10. **Employees.**

10.1. CONTRACTOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor 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 CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR acknowledges that CONTRACTOR and any subcontractors, agents or employees employed by CONTRACTOR 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. CONTRACTOR shall be responsible for providing appropriate liability insurance for its personnel.

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

12. **Suspension.**

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

12.2. In the event Delaware 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 Agreement to reimburse CONTRACTOR for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. **Termination.**

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

a. Not less than 30 calendar days written notice of intent to terminate; and

b. An opportunity for consultation with the terminating party prior to termination.

13.2. This Agreement may be terminated in whole or in part by Delaware without cause, 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 Delaware prior to termination.

13.3. If termination for cause is effected by Delaware, Delaware 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 Delaware by reason of CONTRACTOR's default.

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

13.4. If after termination for cause it is determined that CONTRACTOR has not materially breached this Agreement, the termination shall be deemed to have been effected without cause by Delaware.

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

13.6. Gratuities.

a. Delaware may, by written notice to CONTRACTOR, 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 CONTRACTOR or any agent or representative of CONTRACTOR 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 CONTRACTOR it could pursue in the event of a breach of this Agreement by CONTRACTOR.

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

14. **Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. **Assignment; Subcontracts.**

15.1. Any attempt by CONTRACTOR to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

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

15.3. 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.

15.4. CONTRACTOR shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by CONTRACTOR, its subcontractor or its sub-subcontractor.

15.5. The compensation due shall not be affected by Delaware's approval of the CONTRACTOR's request to subcontract.

16. **Force Majeure.**

16.1 "Force Majeure Event" means the occurrence of:

(a) An act of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder;

(b) ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

(c) a strike or strikes or other industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), in each case affecting on a general basis the industry related to the affected services and which is not attributable to any unreasonable action or inaction on the part of CONTRACTOR or any of its Subcontractors or suppliers and the settlement of which is beyond the reasonable control of all such persons;

(d) specific incidents of exceptional adverse weather conditions in excess of those required to be designed for in this Agreement which are materially worse than those encountered in the relevant places at the relevant time of year during the twenty (20) years prior to the Effective Date;

(e) Tempest, earthquake or any other natural disaster of overwhelming proportions; or

(g) other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts,

which in each case directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement.

16.2 Neither Party shall be in breach of its obligations under this Agreement (other than payment obligations) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred.

16.3 As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.

16.4 CONRACTOR shall, and shall procure that its Subcontractors shall, at all times take all reasonable steps within their respective powers and consistent with commercially reasonable efforts to:

16.4.1 Prevent Force Majeure Events affecting the performance of the obligations under this Agreement;

16.4.2 Mitigate the effect of any Force Majeure Event; and

16.4.3 Comply with its obligations under this Agreement.

The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event.

17. **Non-Appropriation of Funds.**

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

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

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

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

19. **Complete Agreement.**

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

19.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties

hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

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

20. **Miscellaneous Provisions.**

20.1. In performance of this Agreement, CONTRACTOR shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. CONTRACTOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement. Accordingly, CONTRACTOR hereby certifies that it has familiarized itself with all applicable federal, state, and local laws, regulations, ordinances and codes which relate to the provision of services under this Agreement.

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

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

20.4. CONTRACTOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

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

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

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

20.8. CONTRACTOR shall maintain all public records, as defined by 29 *Del. C.*§ 502 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 CONTRACTOR' performance and records pertaining to this Agreement at the CONTRACTOR business office during normal business hours.

21. **Insurance.**

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

a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**

b. Comprehensive General Liability - $1,000,000.00 per person/$3,000,000 per occurrence, **and**

c. Medical/Professional Liability - $1,000,000.00 per person/$3,000,000 per occurrence; or

d. Miscellaneous Errors and Omissions - $1,000,000.00 per person/$3,000,000 per occurrence, or

e. Automotive Liability Insurance covering all automotive units 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.

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

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

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

22. **Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, CONTRACTOR hereby grants, conveys, sells, assigns, and transfers to 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, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

23. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. CONTRACTOR consents to jurisdiction and venue in the State of Delaware, New Castle County.

24. **Notices.**

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

DELAWARE:
Division of Substance Abuse & Mental Health
Contracts Unit
Springer Building Room 306
1901 North DuPont Hwy
New Castle, DE 19720

STATE OF DELAWARE
Department of Health & Social Services
Division of Substance Abuse & Mental Health

VENDOR:
(Vendor contact address)_____

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 CONTRACTOR

_____
NAME, TITLE

_____
Date

STATE OF DELAWARE
DEPARTMENT OF HEALTH & SOCIAL SERVICES

_____
Rita M. Landgraf, Secretary

_____
Date

DIVISION OF SUBSTANCE ABUSE & MENTAL HEALTH

_____
Gerard Gallucci, MD, MHS
Acting Director

_____
Date