



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Services for Aging and Adults with Physical Disabilities

Contract No. 35-1400-2018-09

CATS Sys Doc ID: 022611-0000-0000

PROFESSIONAL SERVICES AGREEMENT For Emergency Response Systems

This Professional Services Agreement ("Agreement") is entered into as of July 1, 2017 and will end on June 30, 2018, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults With Physical Disabilities ("Delaware"), and ADT Health, with offices at 32100 US Highway 19 North, Palm Harbor, FL 34684.

WHEREAS, Delaware desires to obtain certain services for Emergency Response Systems.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, **(HSS-15-046)** attached hereto as Appendix F; and (c) Vendor's response to the request for proposals, attached hereto as Exhibit **D&G**. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4. Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from July 1, 2017 through June 30, 2018. The Contract may be renewed for four (4) one (1) year periods through negotiation between the Vendor and Government Support Services.
- 2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.
- 2.3. Delaware will pay Vendor for the performance of services described in Appendix C. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D.
- 2.4. Delaware's obligation to pay Vendor for the performance of services described in Appendix C, will not exceed the fixed fee amount of **\$60,000.00**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **35-1400-2018-09** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.6. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.7. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.9. Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

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

2.11. Invoices shall be submitted to: ***Kristine.Carbone@state.de.us***

3. Responsibilities of Vendor.

3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

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

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

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

3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

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

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

4. Time Schedule.

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

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.
- 5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:
 - a. Copies of reports, surveys, records, and other pertinent documents;
 - b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Vendor shall return any original data provided by Delaware.

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

6. Work Product.

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

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:
- a. the negligence or other wrongful conduct of the Vendor, its agents or employees, or
 - b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.
- 9.2. If Delaware promptly notifies Vendor in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:
- a. Delaware's misuse or modification of the Deliverable;
 - b. Delaware's failure to use corrections or enhancements made available by Vendor;
 - c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
 - d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
 - e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

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

10. Employees.

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

independent contractor and with which a party comes into direct contact in the course of the services.

10.3. Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of Vendor who will be assigned to this project.

11. Independent Contractor.

11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

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

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

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

12. Dispute Resolution.

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

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

13. Suspension.

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

14. Termination.

- 14.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
- a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- 14.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:
- a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with Delaware prior to termination.
- 14.3. If termination for default is effected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:
- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
 - b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
 - c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.
- 14.4. If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.
- 14.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

14.6. Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. Severability.

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

16. Assignment; Subcontracts.

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

17. Force Majeure.

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

18. Non-Appropriation of Funds.

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

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

19. State of Delaware Business License.

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

20. Complete Agreement.

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

20.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

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

21. Miscellaneous Provisions.

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

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

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

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

21.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national

origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

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

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

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

22. Insurance.

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

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

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

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

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

23. 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.

24. Performance Bond

There is no Performance Bond requirement.

25. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

26. Governing Law.

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

27. Notices.

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

DELAWARE:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building – 141
New Castle, DE. 19720
Attn: Kristine Carbone

VENDOR:

ADT Health
32100 US Highway 19 North
Palm Harbor, FL 34684

Date 5/15/2017

APPENDIX A: Divisional Requirements

Sanctions – Revised 12/9/2016

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

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. The Vendor agrees to adhere to the requirements of DHSS Policy Memorandum # 70, (effective 7/18/2015), and divisional procedures regarding the concept of an inclusive workplace which is accepting of diverse populations in our workforce and actively practices acceptance of diverse populations within our community, through our programs and services we provide to our clients. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Vendor's procedures must include the position(s) responsible for the PM70 process in the vendor's organization. Documentation of staff training on PM70 must be maintained by the Contractor." <http://dhss.delaware.gov/dhss/inclusion/files/pm70inclusionpolicy.pdf>
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.

7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. No part of any funds under this contract shall be used to pay the salary or expenses of any contractor or agent acting for the contractor, to engage in lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.
10. No part of any funds under this contract shall be used to reimburse or otherwise pay for graduate tuition or graduate student salaries of any kind as part of a Federal grant, sub-grant, State Plan or contract.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 14 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.

APPENDIX B: HIPPA Business Associate Agreement

RECITALS

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

WHEREAS, Business Associate provides Emergency Response Systems for Covered Entity pursuant to a contract dated July 1, 2017 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information (“PHI”) to Business Associate (collectively, the “Master Agreement”);

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

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

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

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

1. **Definitions.** Unless otherwise defined herein, capitalized terms used in this BAA shall have the meanings ascribed to them in HIPAA or the Master Agreement between Covered Entity and Business Associate, as applicable.
2. **Obligations and Activities of Business Associate.** To the extent that Business Associate is provided with or creates any PHI on behalf of Covered Entity and is acting as a business associate of Covered Entity, Business Associate agrees to comply with the provisions of HIPAA applicable to business associates, and in doing so, represents and warrants as follows:
 - (a) **Use or Disclosure.** Business Associate agrees to not use or disclose PHI other than as set forth in this BAA, the Master Agreement, or as required by law.
 - (b) **Specific Use of Disclosure.** Except as otherwise limited by this BAA, Business Associate may:

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

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

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

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

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

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

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

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

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

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

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

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

3. **Obligations of Covered Entity.**

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

4. **Term and Termination.**

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

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

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

5. **Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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

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

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


Covered Entity		Business Associate	
By: <u>Signature on File</u>		By: <u>AOT LLC</u>	
Name: <u>Albert W. GRIFFIN</u>		Name: <u>Signature on File</u>	
Title: <u>Active Director</u>		Title: <u>AOT Health Operations Mgr.</u>	
Date: <u>5-17-17</u>		Date: <u>5/15/2017</u>	

APPENDIX C: *Service Specifications*

	<p>DELAWARE HEALTH AND SOCIAL SERVICES</p> <p>Division of Services for Aging and Adults with Physical Disabilities</p>	<p>Emergency Response Systems Service Specifications</p>
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Revision Table

Revision Date	Sections Revised	Description
5/12/2015		Revision for 2016 RFP
11/4/2015	1.2	Deleted: <i>It is only operable within a limited range of the base unit.</i>
11/4/2015	1.2	Deleted: <i>in conjunction with a landline telephone or a cellular unit.</i>
11/4/2015	1.3	Deleted: <i>have landline service (definition of landline service would include; POTS-Plain Old Telephone Service, Cable, or VoIP-Voice over Internet Protocol) or mobile phone for wireless service and</i>
11/4/2015	6.5	Added: <i>The provider must perform a Delaware Sex Offender Central Registry background check on all ERS system installers/employees who will come into contact with ERS service participants, using the following online registry: https://desexoffender.dsp.delaware.gov/SexOffenderPublic/ Individuals that are listed in the registry shall be prevented from direct contact of the program participant. Records of this check must be provided to DSAAPD upon request.</i>
2/3/2016	3.1	Revised from three (3) units to two (2) units of service.
2/3/2016	3.1.2	Deleted: <i>An extra pendant (for spouse or replacement)</i>

	<p>DELAWARE HEALTH AND SOCIAL SERVICES</p> <p>Division of Services for Aging and Adults with Physical Disabilities</p>	<p>Emergency Response Systems Service Specifications</p>
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1.0 SERVICE DEFINITION

- 1.1 An Emergency Response System (ERS) is an electronic device, which enables a high-risk participant to secure immediate help in the event of a physical, emotional, or environmental emergency.
- 1.2 The ERS system must signal the response center when the help button is activated or when the participant has failed to contact the response center at a specified interval. Once the button is activated, a signal is received by a response center, which is operated by trained staff that is responsible for ensuring a response is provided to meet the emergency.
- 1.3 Participants must agree to have an ERS installed service prior to authorization of the ERS.

2.0 SERVICE GOAL

- 2.1 To promote safety in the home by eliminating the need to have extensive in-home supervision and by alerting the service provider in the event of an emergency.
- 2.2 To forestall or prevent institutionalization.

3.0 SERVICE UNIT

- 3.1 There are two (2) units of service:
 - 3.1.1 A monthly landline equipment rental and monitoring cost.
 - 3.1.2 A monthly wireless/cellular equipment rental and monitoring cost

4.0 SERVICE AREA

- 4.1 Providers must offer statewide service area.

5.0 ELIGIBILITY

- 5.1 The Emergency Response System (ERS) service is for participants who are at risk because of one or more safety-related factors including, but not limited to:
 - 5.1.1 Unsteady gait
 - 5.1.2 Risk of falling
 - 5.1.3 Bed bound
 - 5.1.4 Limited communication ability
 - 5.1.5 Other frailty defined by DSAAPD **AND**
- 5.2 One living arrangement risk factor such as:
 - 5.2.1 Living alone
 - 5.2.2 Alone for significant portions of the day
 - 5.2.3 Primary caregiver has limited ability to attend to consumer's needs.
- 5.3 Participants must be 18 years of age or older.

6.0 SERVICE STANDARDS

- 6.1 The provider must comply with all applicable Federal, State, and local rules and laws applying to the provision of the service.
- 6.2 The provider must maintain the participant's right of privacy and confidentiality.
- 6.3 Participants are referred to the service provider by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) Case Manager. The provider must contact the recipient within five (5) working days of the referral.

	<p>DELAWARE HEALTH AND SOCIAL SERVICES</p> <p>Division of Services for Aging and Adults with Physical Disabilities</p>	<p>Emergency Response Systems Service Specifications</p>
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- 6.4 The provider must install the equipment within a maximum of ten (10) working days of the referral unless otherwise directed by the DSAAPD Case Manager
- 6.5 The provider must perform a Delaware Sex Offender Central Registry background check on all ERS system installers/employees who will come into contact with ERS service participants, using the following online registry:
<https://desexoffender.dsp.delaware.gov/SexOffenderPublic/>
Individuals that are listed in the registry shall be prevented from direct contact of the program participant. Records of this check must be provided to DSAAPD upon request.
- 6.6 The provider must educate the participant on the operation of the system.
- 6.7 If the provider does not install equipment to begin services within ten (10) working days, the provider must notify the DSAAPD Case Manager regarding the reason for the delay.
- 6.8 The provider must instruct participants of the need to test equipment at the required frequency of testing and the reporting of maintenance problems.
- 6.9 The provider must respond to reports of equipment problems/maintenance requests within forty-eight (48) hours.
- 6.10 The provider must maintain and update the list of emergency contacts as needed.
- 6.11 The provider must provide DSAAPD with a monthly report of ERS activity on request.
- 6.12 The participant is responsible for the proper handling of the emergency response equipment. The provider may bill the participant for lost or damaged equipment
- 6.13 The provider must notify the DSAAPD Case Manager within two (2) working days when it becomes aware that any of the following occurred:
 - 6.11.1 Participant's ERS system is activated.
 - 6.11.2 Participant is hospitalized or institutionalized.
 - 6.11.3 Participant changes addresses.
 - 6.11.5 Participant expires
 - 6.11.6 Participant wants the service withdrawn.
- 6.14 The provider must ensure access to authorized representatives of Delaware Health and Social Services and/or DSAAPD to the participant's case files.
- 6.15 The provider must complete the information at the bottom of the purchase service request form (SRF) stating the date of service acceptance, date of installation, or decline service
- 6.16 The provider must return all completed purchase service referral form to DSAAPD Case Manager and Contract Manager within ten (10) days.
- 6.17 The provider must comply with DSAAPD quality assurance initiatives related to this program.
- 6.18 The provider must cooperate with DSAAPD to resolve problems which threaten participant service.
- 6.19 The provider must notify DSAAPD and participant in writing two (2) weeks prior to termination of services. The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
- 6.20 The provider must give DSAAPD thirty (30) days written notice if terminating five (5) or more participants at a given time.

7.0 INVOICING REQUIREMENTS

- 7.1 Providers will invoice using the DSAAPD Invoicing Workbook (IW) IW-007, pursuant to the DSAAPD Policy Manual for Contracts, Policy Number X-Q, and Invoicing.

APPENDIX D: *Contract Budget*

Emergency Response Systems Budget Workbook

Agency:		ADT Health
Total Funds Requested:		60,000
Landline Rate	Unit Cost Breakdown	Unit Cost Total
1	Staff Salaries	\$9.55
2	Fringe Benefits	
3	Travel & Training	
3a	Travel (Mileage x .40 per mile)	\$1.52
3b	Training	
4	Contractual	
4a	Rent	\$4.40
4b	Electricity	
4c	HVAC	
4d	Communications	
4e	Insurance	
4f	Repairs	
4g	Other (specify) Customer Service	\$3.45
4h	Other (specify) Freight	\$1.12
5	Supplies	
6	Equipment	\$2.95
7	Indirect Costs	
8	Total Unit Monthly Equipment Rental/Monitoring Costs	\$22.99

Cellular Rate	Unit Cost Breakdown	Unit Cost Totals
1	Staff Salaries	\$9.55
2	Fringe Benefits	
3	Travel & Training	
3a	Travel (Mileage x .40 per mile)	\$1.52
3b	Training	
4	Contractual	
4a	Rent	\$4.40
4b	Electricity	
4c	HVAC	
4d	Communications	
4e	Insurance	
4f	Repairs	
4g	Other (specify) Customer Service	\$3.45
4h	Other (specify) Freight	\$1.12
5	Supplies	
6	Equipment	\$2.95
7	Indirect Costs	
8	Total Unit Monthly Equipment Rental/Monitoring Costs	\$22.99

APPENDIX E: *DSAAPD Policy Manual for Contracts*

Included for reference

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

APPENDIX F: Request for Proposal

Included for reference HSS-15-046

APPENDIX G: Work Plan

I. Work Plan

1.0 Service Definition

ADT has two (2) types of Emergency Response Systems (ERS) which a participant may use to receive help if they are unable to reach a phone. Listed below are the different systems and each of its features.

a) Landline Alert System



The **Landline Alert System** features a waterproof pendant or wristband; each with your own personal help button. It connects wirelessly to a base station equipped for two-way communication to the caring professionals at ADT, available 24/7, even on holidays. When the help button is pressed, a trained ADT professional will speak over the two-way voice intercom on the base unit and will call emergency responders as needed. This system requires a traditional phone line and has a convenient 300-foot range that gives confidence to those we care for, in virtually every room of the house.

Includes:

- Medical alert base unit with two-way voice intercom.
- Wireless waterproof pendant or wireless waterproof wristband. *(Please specify either pendant or wristband on Service Referral Form.)*
- A second pendant can be programmed for a husband or wife of the participant at no additional cost if requested by DSAAPD Case Manager.
- High/low temperature sensor.
- Battery back-up for up to 24 hours.

b) Cellular Alert System



The **Cellular Alert System** offers extended range, so it's perfect for people who love to garden and relax in the yard. It offers wireless capability that eliminates the need for a landline traditional phone line. This system features a waterproof pendant or wristband, each with your own personal help button. It connects wirelessly to a base station equipped for two-way communication to the caring professionals at ADT available 24/7, even on holidays. When the help button is pressed, a trained ADT professional will speak over the two-way voice intercom on the base unit and will call emergency responders as needed. This system has an extensive 600-foot range² that even works outside in your garden or by the pool.

Includes:

- Medical alert base unit with two-way voice intercom.
- Wireless waterproof pendant, or wireless waterproof wristband. *(Please specify either pendant, wristband or fall detection pendant on the Service Referral Form.)*
- A second pendant can be programmed for a husband or wife of the participant at no additional cost if requested by DSAAPD Case Manager.
- High/low temperature sensor.
- Battery back-up for up to 24 hours.

2.0 Service Goal

- To respond to emergencies of functionally impaired elderly or persons with disabilities who live alone or live with another disabled person.
- To reduce the days of institutional care and misutilization of health resources and thus affect a net savings in the total health cost for clients, agencies and government bodies.
- To reduce anxiety about living alone and to increase confidence in performing activities in and out of their home, knowing help can be there when needed.
- To reduce the Emergency Response System monthly rates thus allowing the Division of Services for Aging & Adults with Physical Disabilities to cover more participants than with previous Emergency Response System providers.

3.0 Service Area

ADT has two local offices which will be covering the entire State of Delaware for installation and service of the Personal Emergency Response Systems.

4.0 Service Locations

New Castle Sales Service Office

140 Quigley Blvd.

New Castle, DE 19720

Jerry Belum, ADT Install & Service Manager

P: 302-395-3500

jbelum@adt.com

Salisbury Sales Service Office

803 N. Salisbury Blvd.

Salisbury, MD 21801

Mark Ford, ADT Install & Service Manager

P: 443-260-1802

maford@adt.com

***For new installations and service request, please call 877-456-1787 ext.4075,
fax 877-666-4390 / 866-224-3936 or email adthealthreferral@adt.com***

5.0 Time Frames for Work Plan

- ADT will attempt to have the system installed for the participant within three to five (3-5) business days of receipt of the initial referral from the DSAAPD Case Manager. ***(Installation timeline can be earlier with participation from the participant.)***
- If two providers are chosen for the RFP, ADT will install all 250 + participants ERS units within a three week period of the agreed timeline placed by DSAAPD.

- If ADT is the sole provider chosen for the RFP, a plan to enlist three additional installers to install all 500 + participants ERS units within a one month period.
- If there are any issues reaching a participant to schedule an installation date after three separate attempts we will notify the DSAAPD Case Manager via fax, phone and/or email if provided on the Services Referral Form. This way ADT can resolve the issue to minimize any delays in installation.

6.0 Service Standards (Regarding Section 6.0)

- 6.1 ADT, LLC will comply with all Federal, State, and local rules and laws regarding provision of the service.
- 6.2 ADT, LLC maintains a secure building. All access into the building is through a "Card Access" system which records who enters the building and the time of day and the day of the week. All employee access is determined by the nature of their jobs. All participant files are kept in a locked room which also needs "Card Access." Only employees with a need to know are permitted access. All confidential information which is no longer needed is placed in a locked shredder box in the office and then shredded on site by a professional company.
- 6.3 Participant referrals received from DSAAPD by ADT, LLC will be data entered and participant will be contacted by our service department to schedule an installation date if the Service Referral Form (SRF) is received by 3pm Eastern Standard Time. Any referrals received after 3pm Eastern Standard Time will be processed the following business day.
- 6.4 ADT, LLC makes every effort to have a participants system installed within three (3-5) business days of receiving the initial referral from the case manager. If we are unable to reach a participant to schedule an installation date after three separate attempts we will notify the DSAAPD Case Manager via fax, phone and/or email if provided on the Services Referral Form.
- 6.5 ADT, LLC will send a trained technician to the participants home to install, train, and test the ERS unit and pendant/wristband with the participant. Both ADT, LLC technician and client will sign a Completion Statement to contest the technician was there to train and test the ERS unit.
- 6.6 If at any time ADT, LLC has difficulty reaching a participant and/or is unable to install a unit within (10) business days, we will notify DSAAPD case manager using our Agency Notification Form via fax or email.
- 6.7 ADT, LLC will conduct monthly test calls via phone with the participant. If we are unable to test with the participant, we will contact the DSAAPD case manager. If the system does not work we will schedule for a technician to service the ERS unit.
- 6.8 If equipment issues are reported by case manager, family member or participant ADT, LLC will schedule a technician to service the ERS unit. If at any time ADT, LLC knows of an issue with the equipment, we will

- contact the participant immediately. We will try to trouble shoot over the phone or send a technician to replace system if needed.
- 6.9 ADT, LLC will conduct a semi-annual account verification with the participant to verify we have the correct address and emergency contact information.
- 6.10 ADT can provide a print out of the participants monitoring history for any DSAAPD case manager request.
- 6.11 **Per DSAAPD Agreement:**
- a) No charges for lost or damaged equipment: DSAAPD will agree that IF a client damages equipment consistently, or if there is a concern of negligence, that DSAAPD upon review, will offer to reimburse ADT as a one-time approved payment, or remove client from the service.
 - b) No charges for an extra pendent: DSAAPD can agree that we can “cap” the number of pendants to two (2) per household.
- 6.12 ADT, LLC will notify DSAAPD case managers within two business days when it becomes aware of any of the follow events, via our Incident Report Form or Agency Notification form.
- Participants ERS is activated
- a) Participant is hospitalized or institutionalized
 - b) Participant change of address
 - c) Participant expires
 - d) Participant wants the service withdrawn
- 6.13 All participant files are kept at our Palm Harbor, Florida location in a locked file room and can be made available for review at any time via request from any authorized representative of DSAAPD.
- 6.14 At the time ADT receives the Service Referral Form from DSAAPD, an ADT, LLC representatives will sign, date and return the Service Referral Form with the date of service acceptance, date of installation or decline of service.
- 6.15 ADT, LLC will be sure to return all Service Referral Forms (SRF) to the corresponding DSAAPD Case Manager within (10) business days.
- 6.16 ADT will perform Annual Customer Surveys, where we send a survey letter asking the participant to fill it out and return it in the prepaid envelope they received. We also have annual employee training which allows us to review all policies and procedure. If the state requires an annual audit of the client files and monitoring history we will do so as well.
- 6.17 ADT, LLC will have several point of contacts, that will work with DSAAPD to resolve any problems that may threaten participant services.
- 6.18 If at any time ADT, LLC must terminate a participant service, we will notify the participant and Case Manager via our Agency Notification Form and Cancellation Letter.
- 6.19 If at any time five or more participants must be terminated, ADT will notify DSAAPD (30) days prior to termination.



DELAWARE HEALTH AND SOCIAL SERVICES

Division of Services for Aging and Adults with Physical Disabilities

Contract No. 35-1400-2018-08
CATS Sys Doc ID: 022612-0000-0000

PROFESSIONAL SERVICES AGREEMENT For EMERGENCY RESPONSE SYSTEMS

This Professional Services Agreement ("Agreement") is entered into as of July 1, 2017, and will end on June 30, 2018, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults With Physical Disabilities ("Delaware"), and CST, Inc./ GTL Inc. dba Link to Life, (the "Vendor"), with offices at 27475 Meadowbrook Rd. , Novi, MI 48377

WHEREAS, Delaware desires to obtain certain services for Emergency Response Systems

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, (HSS-15-046) attached hereto as Appendix F; and (c) Vendor's response to the request for proposals, attached hereto as Appendix D&G. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4. Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of

either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from July 1, 2017 through June 30, 2018
- 2.2. Delaware will pay Vendor for the performance of services described in Appendix C. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D.
- 2.3. Delaware's obligation to pay Vendor for the performance of services described in Appendix C. Work will not exceed the fixed fee amount of **\$100,000.00**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number 35-1400-2018-08 on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.5. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.6. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic WV-9.
- 2.7. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.8. Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

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

2.10. Invoices shall be submitted to: ***Kristine.Carbone@state.de.us***

3. Responsibilities of Vendor.

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

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

4. Time Schedule.

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

5. State Responsibilities.

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

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

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

Vendor shall return any original data provided by Delaware.

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

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

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

6. Work Product.

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

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

6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

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

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

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

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

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

10. Employees.

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

11. Independent Contractor.

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

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

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

12. Dispute Resolution.

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

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

13. Suspension.

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

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

14. Termination.

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

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

14.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:

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

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

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

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

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

14.6. Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. Severability.

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

16. Assignment; Subcontracts.

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

17. Force Majeure.

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

18. Non-Appropriation of Funds.

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

19. State of Delaware Business License.

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

20. Complete Agreement.

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

20.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

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

21. Miscellaneous Provisions.

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

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

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

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

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

breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

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

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

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

22. Insurance.

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

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

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

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

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

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

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

23. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

24. Governing Law.

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

25. Notices.

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

DELAWARE:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building – 141
New Castle, DE. 19720
Attn: Kristine Carbone

VENDOR:

CST Inc./ GTL Inc. dba Link to Life
27475 Meadowbrook Rd.
Novi, MI 48377

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

For the State of Delaware:
Department of Health & Social Services (DHSS)

N/A
Witness

N/A – Delegation Agreement
Kara Odom Walker, MD, MPH, MSHS
Cabinet Secretary, DHSS

N/A
Date

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


Signature on File

Signature on File


Witness


Albert W. Griffith, Jr.
Acting Director, DSAAPD

4-27-17
Date

For the Contractor:
CST Inc./ GTL Inc. dba Link to Life

Signature on File

Signature on File

 Witness *Jennifer Thompson,*
Sr. Contracts Administrator


Name *Jeffery S. Prough*

CEO/President
Title

4/19/17
Date

APPENDIX A: Divisional Requirements

Sanctions – Revised 12/9/2016

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

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. The Vendor agrees to adhere to the requirements of DHSS Policy Memorandum # 70, (effective 7/18/2015), and divisional procedures regarding the concept of an inclusive workplace which is accepting of diverse populations in our workforce and actively practices acceptance of diverse populations within our community, through our programs and services we provide to our clients. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Vendor's procedures must include the position(s) responsible for the PM70 process in the vendor's organization. Documentation of staff training on PM70 must be maintained by the Contractor." <http://dhss.delaware.gov/dhss/inclusion/files/pm70inclusionpolicy.pdf>
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.

7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. No part of any funds under this contract shall be used to pay the salary or expenses of any contractor or agent acting for the contractor, to engage in lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.
10. No part of any funds under this contract shall be used to reimburse or otherwise pay for graduate tuition or graduate student salaries of any kind as part of a Federal grant, sub-grant, State Plan or contract.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 14 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.

APPENDIX B: *HIPPA Business Associate Agreement*

RECITALS

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

WHEREAS, Business Associate provides Emergency Response Systems for Covered Entity pursuant to a contract dated July 1, 2017 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information (“PHI”) to Business Associate (collectively, the “Master Agreement”);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Obligations of Covered Entity.**

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

4. **Term and Termination.**

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

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

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

5. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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


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

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

Covered Entity
By: Signature on File
Name: Albert W. White Jr
Title: Acting Director
Date: 4-27-17


Business Associate
By: Signature on File
Name: Jeffery S. Prough
Title: CEO/President
Date: 4/19/17

APPENDIX C: *Service Specifications*

	<p>DELAWARE HEALTH AND SOCIAL SERVICES</p> <p>Division of Services for Aging and Adults with Physical Disabilities</p>	<p>Emergency Response Systems Service Specifications</p>
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Revision Table

Revision Date	Sections Revised	Description
5/12/2015		Revision for 2016 RFP
11/4/2015	1.2	Deleted: <i>It is only operable within a limited range of the base unit.</i>
11/4/2015	1.2	Deleted: <i>in conjunction with a landline telephone or a cellular unit.</i>
11/4/2015	1.3	Deleted: <i>have landline service (definition of landline service would include; POTS-Plain Old Telephone Service, Cable, or VoIP-Voice over Internet Protocol) or mobile phone for wireless service and</i>
11/4/2015	6.5	Added: <i>The provider must perform a Delaware Sex Offender Central Registry background check on all ERS system installers/employees who will come into contact with ERS service participants, using the following online registry: https://desexoffender.dsp.delaware.gov/SexOffenderPublic/ Individuals that are listed in the registry shall be prevented from direct contact of the program participant. Records of this check must be provided to DSAAPD upon request.</i>
2/3/2016	3.1	Revised from three (3) units to two (2) units of service.
2/3/2016	3.1.2	Deleted: <i>An extra pendant (for spouse or replacement)</i>

	<p>DELAWARE HEALTH AND SOCIAL SERVICES</p> <p>Division of Services for Aging and Adults with Physical Disabilities</p>	<p>Emergency Response Systems Service Specifications</p>
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1.0 SERVICE DEFINITION

- 1.1 An Emergency Response System (ERS) is an electronic device, which enables a high-risk participant to secure immediate help in the event of a physical, emotional, or environmental emergency.
- 1.2 The ERS system must signal the response center when the help button is activated or when the participant has failed to contact the response center at a specified interval. Once the button is activated, a signal is received by a response center, which is operated by trained staff that is responsible for ensuring a response is provided to meet the emergency.
- 1.3 Participants must agree to have an ERS installed service prior to authorization of the ERS.

2.0 SERVICE GOAL

- 2.1 To promote safety in the home by eliminating the need to have extensive in-home supervision and by alerting the service provider in the event of an emergency.
- 2.2 To forestall or prevent institutionalization.

3.0 SERVICE UNIT

- 3.1 There are two (2) units of service:
 - 3.1.1 A monthly landline equipment rental and monitoring cost.
 - 3.1.2 A monthly wireless/cellular equipment rental and monitoring cost

4.0 SERVICE AREA


- 4.1 Providers must offer statewide service area.

5.0 ELIGIBILITY

- 5.1 The Emergency Response System (ERS) service is for participants who are at risk because of one or more safety-related factors including, but not limited to:
 - 5.1.1 Unsteady gait
 - 5.1.2 Risk of falling
 - 5.1.3 Bed bound
 - 5.1.4 Limited communication ability
 - 5.1.5 Other frailty defined by DSAAPD **AND**
- 5.2 One living arrangement risk factor such as:
 - 5.2.1 Living alone
 - 5.2.2 Alone for significant portions of the day
 - 5.2.3 Primary caregiver has limited ability to attend to consumer's needs.
- 5.3 Participants must be 18 years of age or older.

6.0 SERVICE STANDARDS

- 6.1 The provider must comply with all applicable Federal, State, and local rules and laws applying to the provision of the service.
- 6.2 The provider must maintain the participant's right of privacy and confidentiality.
- 6.3 Participants are referred to the service provider by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) Case Manager. The provider must contact the recipient within five (5) working days of the referral.

	<p>DELAWARE HEALTH AND SOCIAL SERVICES</p> <p>Division of Services for Aging and Adults with Physical Disabilities</p>	<p>Emergency Response Systems Service Specifications</p>
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- 6.4 The provider must install the equipment within a maximum of ten (10) working days of the referral unless otherwise directed by the DSAAPD Case Manager
- 6.5 The provider must perform a Delaware Sex Offender Central Registry background check on all ERS system installers/employees who will come into contact with ERS service participants, using the following online registry:
<https://desexoffender.dsp.delaware.gov/SexOffenderPublic/>
Individuals that are listed in the registry shall be prevented from direct contact of the program participant. Records of this check must be provided to DSAAPD upon request.
- 6.6 The provider must educate the participant on the operation of the system.
- 6.7 If the provider does not install equipment to begin services within ten (10) working days, the provider must notify the DSAAPD Case Manager regarding the reason for the delay.
- 6.8 The provider must instruct participants of the need to test equipment at the required frequency of testing and the reporting of maintenance problems.
- 6.9 The provider must respond to reports of equipment problems/maintenance requests within forty-eight (48) hours.
- 6.10 The provider must maintain and update the list of emergency contacts as needed.
- 6.11 The provider must provide DSAAPD with a monthly report of ERS activity on request.
- 6.12 The participant is responsible for the proper handling of the emergency response equipment. The provider may bill the participant for lost or damaged equipment
- 6.13 The provider must notify the DSAAPD Case Manager within two (2) working days when it becomes aware that any of the following occurred:
 - 6.11.1 Participant's ERS system is activated.
 - 6.11.2 Participant is hospitalized or institutionalized.
 - 6.11.3 Participant changes addresses.
 - 6.11.5 Participant expires
 - 6.11.6 Participant wants the service withdrawn.
- 6.14 The provider must ensure access to authorized representatives of Delaware Health and Social Services and/or DSAAPD to the participant's case files.
- 6.15 The provider must complete the information at the bottom of the purchase service request form (SRF) stating the date of service acceptance, date of installation, or decline service
- 6.16 The provider must return all completed purchase service referral form to DSAAPD Case Manager and Contract Manager within ten (10) days.
- 6.17 The provider must comply with DSAAPD quality assurance initiatives related to this program.
- 6.18 The provider must cooperate with DSAAPD to resolve problems which threaten participant service.
- 6.19 The provider must notify DSAAPD and participant in writing two (2) weeks prior to termination of services. The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
- 6.20 The provider must give DSAAPD thirty (30) days written notice if terminating five (5) or more participants at a given time.

7.0 INVOICING REQUIREMENTS

- 7.1 Providers will invoice using the DSAAPD Invoicing Workbook (IW) IW-007, pursuant to the DSAAPD Policy Manual for Contracts, Policy Number X-Q, and Invoicing.

APPENDIX D: *Contract Budget*

Emergency Response Systems Budget Workbook

		Agency:	GTL, Inc. dba Link to Life
		Total Funds Requested:	\$100,000.00
Landline Rate	Unit Cost Breakdown	Unit Cost Total	
1	Staff Salaries	\$3.90	
2	Fringe Benefits	\$1.22	
3	Travel & Training		
3a	Travel (Mileage x .40 per mile)	\$2.76	
3b	Training	\$0.53	
4	Contractual		
4a	Rent	\$1.15	
4b	Electricity	\$0.94	
4c	HVAC	\$0.92	
4d	Communications	\$0.35	
4e	Insurance	\$0.32	
4f	Repairs	\$5.29	
4g	Other (specify)		
4h	Other (specify)		
5	Supplies	\$2.89	
6	Equipment	\$1.72	
7	Indirect Costs	\$1.91	
8	Total Unit Monthly Equipment Rental/Monitoring Costs	\$23.90	

Free Installation / \$23.90 Monthly Monitoring

Cellular Rate	Unit Cost Breakdown	Unit Cost Totals	
1	Staff Salaries	\$3.90	
2	Fringe Benefits	\$1.22	
3	Travel & Training		
3a	Travel (Mileage x .40 per mile)	\$2.76	
3b	Training	\$0.53	
4	Contractual		
4a	Rent	\$1.15	
4b	Electricity	\$0.94	
4c	HVAC	\$0.92	
4d	Communications	\$0.35	
4e	Insurance	\$0.32	
4f	Repairs	\$5.29	
4g	Other (specify)		
4h	Other (specify)		
5	Supplies	\$2.89	
6	Equipment	\$1.72	
7	Indirect Costs	\$1.91	
8	Total Unit Monthly Equipment Rental/Monitoring Costs	\$23.90	

Free Installation / \$23.90 Monthly Monitoring

APPENDIX E: *DSAAPD Policy Manual for Contracts*

Included for reference

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

APPENDIX F: Request for Proposal

Included for reference HSS-15-046

APPENDIX G: Work Plan

Critical Signal Technologies, Inc. /GTL, Inc. dba Link to Life and Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities Work Plan:

Our agency's work plan for service delivery includes the following:

Service Description:

CST-LTL's, Personal Emergency Response System (PERS) Units, are electronic devices, which enable individuals to secure help in the event of an emergency. The system has a portable "help" button, a waterproof, wireless, pendant or bracelet, which allows for client mobility. CST-LTL utilizes Microkey Central Station which meets and exceeds all UL standards. The alarms signals are transmitted through the receivers and are sent to the central monitoring software. The system is programmed to signal CST-LTL's Care Center once the "help" button is activated. Upon receiving a signal, the alarm opens up a two-way voice communication with the client and the client record opens automatically to provide the Representative the individual's personal information and monitoring instructions customized for that individual. Information includes but is not limited to, primary language, diagnosis, doctor's office contact, desired hospital, allergies, medication location, DNR if applicable and Responder contact information. Within seconds, the client is connected, using hands-free 2-way, ClearVoice technology, to the company's 24-hour, state-of-the-art, Care Center (i.e. central station or call center) monitoring facility where highly trained professionals are staffed to administer dedicated and intimate service. The Care Center Representative determines whether to contact a responder or dispatch 911 emergency services depending on the nature of the call, the condition of the client, and the pre-determined emergency protocol on record. CST-LTL's central station meets and exceeds all UL standards and utilizes the best-of-breed technologies that enhance the customer experience through personalized care. All equipment used by CST is approved by the Federal Communication and meets UL safety standards 1637 specifications for Home Health Signaling Equipment. CST will provide verification of compliance upon request.

Installation:

When CST-LTL receives a new service authorization; a Data Entry Representative within 24 hours accepts the referral and enters the client's authorization information into our Monitoring system which creates a master account for the client. Once entered, an Installation Coordinator creates a work order with the installation specs and then assigns the ticket and forwards the installation specs to the local installer. Within five (5) working days the installer will contact the client (or another designated contact person, i.e. a son, daughter, caregiver, or case manager) to arrange a time to setup, install and test the PERS equipment. Installations are completed within a maximum of ten (10) business days of receipt of the referral, unless otherwise directed by the DSAAPD Case Manager, and take approximately one hour to complete. Once installed, CST-LTL will complete the bottom grey section on the original SRF Form by marking the participant has been enrolled box and filling in the effective start date. CST-LTL will then email a secured copy to the client's Case Manager and Kristine Carbone, DSAAPD contract manager at: Kristine.Carbone@state.de.us. IF, the provider does not install the equipment to begin services within ten (10) business days, CST-LTL must notify Kristine Carbone, DSAAPD contract manager, requesting a 5 day extension. This notice will include the reason for the delay and be sent on CST-LTL standard fax letterhead, via secured email. But IF, the anticipated delay is going to be 5+ days, CST-LTL will not send a extension request notice, instead CST-LTL will send a cancel by completing the bottom grey section on the original SRF Form and mark the box "Participant has not been accepted for the authorized service for the following reason(s)" and provide the reason. Email a secured copy to the client's Case Manager and Kristine Carbone, DSAAPD contract manager.

At the time of install, the installer will ask the client where they spend most of their time in the home to determine and secure the best placement of the PERS unit. The installer will make sure the power is not on a switched outlet, and that all cords are properly place and are not trip hazards. Once the unit is in place, the installer will obtain client and responder information and complete all necessary paperwork. Each member customizes their own personal response protocol which includes who to contact for emergent as well as non emergent needs and in what order.

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www.CSTLTL.com
1-888-55-SIGNAL

Once the paperwork is completed the installer furnishes each client with written instructions and training is provided to both the client and caregiver (if applicable) of the unit's features and operation. The installer will then call into the care center to update all client information in the system and notify the Care Center of the installation. The installer will test the unit a minimum of two times. Testing will include a range test to ensure the client feels comfortable pressing their button for HELP in the event of an emergency. The Care Center Representative will welcome the client and let them know we are available 24 hrs per day, 7 days per week. The client will sign the signature page 21 of Equipment Training & Installation checklist contained within the "Getting Started Guide". The installer will remove page 21 and return it to CST-LTL within 24 hours, leaving the rest of the GSG for the client. Each device will be programmed to run a monthly self diagnostic test, as required. Additionally, clients are encouraged to test their units by pressing the pendant once a month. CST-LTL furnishes ongoing assistance, as necessary, to evaluate and adjust the devices or to instruct clients and responders in the use of devices, as well as to provide for performance checks.

Alarm responses are scripted, which provides a consistent message and an added level of confidence to our clients that they will receive the same level of care - day or night. Our Care Center functions include Alarm and Tele-Health Monitoring and Order Processing. All teams are cross-trained and support Alarm Monitoring during traffic peaks to ensure all alarms are answered in a timely manner and clients receive over-the-top focus and care during emergency or social reassurance calls. Supervision is provided on all shifts by Care Center Supervisors and Lead Operators. Care Center Representatives are continuously evaluated and provided with immediate feedback and ongoing coaching. Evaluations are based on internal and external customer service levels, alarm response protocol adherence, troubleshooting, and decision making skills. Call audits are performed monthly for all Care Center Representatives.

Response to Alarms:

Upon receiving a signal, a CST-LTL Care Center Representative will attempt to make verbal contact with the client through the two-way voice transmitter in the base unit. If there is no response, they will call on the telephone. The average response time from the initiation of the signal to the time the Operator is in touch with the client is 45-60 seconds. Upon contact, the operator quickly assesses the reason for the call. Over 90% of calls are non-emergencies, such as routine tests, accidental alarms, social reassurance calls or problems resolved with the aid of a Responder, such as a family member or neighbor. If the Care Center Representative is unable to establish contact or if further assistance is required, the Operator will immediately begin contacting the responders in the client profile, or send Emergency Medical Services depending on their customized protocol.

Our Operators follow through on every call and maintain contact at each stage of the emergency to ensure the quickest possible results. As part of every emergency alarm, the client's lists of responders are contacted. Responders typically include caregivers, family members, friends and/or health care professionals. They are given a detailed report of the nature and resolution of the emergency. Clients can designate as many responders as they want and can include relatives and friends anywhere in the country.

Notification & Follow up calls:

Any emergencies will be reported to the agencies Case Manager within twenty-four (24) hours when it becomes aware that any of the following occurred:

- Participant's ERS system is activated
- Participant is hospitalized or institutionalized
- Participant changes addresses
- Participant expires
- Participant wants the service withdrawn



Value added services provided at no additional cost:

Social Reassurance - sometimes clients want to hear a live, friendly voice on the other end of the phone. CST-LTL is pleased to offer our Social Reassurance Services. Our Care Center Staff can take the time to speak with clients for as long as they need. We all feel lonely at times but whether clients are feeling sad and scared, lonely or depressed, clients can just push the Help Button and one of our caring staff members will be speaking to the client within seconds. CST-LTL has no limit as to the amount of time we can spend on a call. No matter what the client needs, CST-LTL is here.

Objectives:

- Reduce non-reimbursed ER visits
- Provide a solution to the ever increasing frail and disabled older adult population
- Provide early warnings for interventions
- Reduce in-home visits by professionals
- Reduce caregiver stress
- Improve outcomes and quality of care
- Involve family members in care
- Save money and save lives

A typical day at CST-LTL consists of:

- We answer 6,000 calls each business day
- We handle 5,000 signals each day
- We make 4,700 telephone calls each day
- We handle 780 service tickets each day
- We ship 350 new devices out each day
- We handle 450 actual emergencies each day
- We help save 330 lives each day!

As a company dedicated to providing all of its' public and private sector clients with superior service, Critical Signal Technologies, Inc., recognizes the importance of serving members in a culturally and linguistically appropriate manner. We know from direct experience and the experiences of our client groups that:

- Clients may have limited proficiency with the English language- including some individuals whose native language is English but who are not fully literate.
- Some clients have disabilities and/or cognitive impairments that impede their communicating with CST-LTL and using health care services.
- Clients come from diverse cultures that view health-related behaviors and health care differently than the dominant culture.

CST-LTL is committed to ensuring that its staff and its participating distributors and installers, as well as its policies and infrastructure, are attuned to meeting the diverse needs of all members, especially those who face these challenges. In order to meet the needs of our clients, the CST-LTL Care Center is open 24hrs a day 365 days per year and there is always a Spanish speaking representative on staff. In addition, we use Language Line Services which enables us to offer translation for 177 different languages and the TTY/TDD Teletypewriter for deaf clients. Please visit www.language.com for more information. Additional wireless accessories are also available which include: fall detectors, motion detectors, door contacts, smoke detectors, CO detectors, temperature sensors, flood detectors, along with adaptive equipment such as strobe lights, sip and puff or pillow switches.



Contract No. 35-1400-2018-07
CATS Sys Doc ID: 022597-0000-0000

**PROFESSIONAL SERVICES AGREEMENT
For
Emergency Response Systems**

This Professional Services Agreement ("Agreement") is entered into as of July 1, 2017 and will end on June 30, 2018, by and between the State of Delaware, Department of Health & Social Services, Division of Services for Aging & Adults With Physical Disabilities ("Delaware"), and Lifeline Systems, with offices at 3000 Minuteman Rd MSC 5301, Andover, MA 01810.

WHEREAS, Delaware desires to obtain certain services for Emergency Response Systems.

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

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

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

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware's request for proposals, **(HSS-15-046)** attached hereto as Appendix F; and (c) Vendor's response to the request for proposals, attached hereto as Exhibit D&G. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4. Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from July 1, 2017 through June 30, 2018. The Contract may be renewed for four (4) one (1) year periods through negotiation between the Vendor and Government Support Services.
- 2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.
- 2.3. Delaware will pay Vendor for the performance of services described in Appendix C. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix D.
- 2.4. Delaware's obligation to pay Vendor for the performance of services described in Appendix C, will not exceed the fixed fee amount of **\$90,000.00**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **35-1400-2018-07** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.6. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- 2.7. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.9. Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

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

2.11. Invoices shall be submitted to: ***Kristine.Carbone@state.de.us***

3. Responsibilities of Vendor.

3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

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

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

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

3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

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

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

4. Time Schedule.

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

5. State Responsibilities.

- 5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.
- 5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform Vendor by written notice before the effective date of each such delegation.
- 5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.
- 5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:
 - a. Copies of reports, surveys, records, and other pertinent documents;
 - b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Vendor shall return any original data provided by Delaware.

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

6. Work Product.

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

7. Confidential Information.

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

8. Warranty.

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

9. Indemnification; Limitation of Liability.

- 9.1. Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:
- a. the negligence or other wrongful conduct of the Vendor, its agents or employees, or
 - b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.
- 9.2. If Delaware promptly notifies Vendor in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:
- a. Delaware's misuse or modification of the Deliverable;
 - b. Delaware's failure to use corrections or enhancements made available by Vendor;
 - c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
 - d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
 - e. Information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

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

10. Employees.

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

independent contractor and with which a party comes into direct contact in the course of the services.

10.3. Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of Vendor who will be assigned to this project.

11. Independent Contractor.

11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

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

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

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

12. Dispute Resolution.

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

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

13. Suspension.

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

14. Termination.

- 14.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:
- a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.
- 14.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:
- a. Not less than 20 calendar days written notice of intent to terminate; and
 - b. An opportunity for consultation with Delaware prior to termination.
- 14.3. If termination for default is effected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:
- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
 - b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
 - c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.
- 14.4. If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.
- 14.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

14.6. Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 13.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. Severability.

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

16. Assignment; Subcontracts.

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

17. Force Majeure.

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

18. Non-Appropriation of Funds.

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

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

19. State of Delaware Business License.

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

20. Complete Agreement.

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

20.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

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

21. Miscellaneous Provisions.

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

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

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

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

21.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national

origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

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

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

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

22. Insurance.

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

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate.

22.2. The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- d. Automotive Liability Insurance (Bodily Injury) covering all automotive units transporting departmental clients or staff used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- e. Automotive Property Damage (to others) - \$25,000

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

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

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

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

23. 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.

24. Performance Bond

There is no Performance Bond requirement.

25. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

26. Governing Law.

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

27. Notices.

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

DELAWARE:

Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)
1901 N. DuPont Hwy. Main Building – 141
New Castle, DE. 19720
Attn: Kristine Carbone

VENDOR:

Philips Lifeline
3000 Minuteman Rd. MSC
Andover, MA 01810

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

For the State of Delaware:
Department of Health & Social Services (DHSS)

N/A _____
Witness

N/A – Delegation Agreement
Kara Odom Walker, MD, MPH, MSHS
Cabinet Secretary, DHSS

N/A _____
Date

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

Signature on File

Signature on File

Witness _____

Albert W. Griffith, Jr.
Acting Director, DSAAPD

5-15-17
Date

For the Contractor:
Philips Lifeline

Signature on File

Signature on File

Witness _____

Name _____

Business Contracts Manager
Title

5/11/17
Date

APPENDIX A: Divisional Requirements

Sanctions – Revised 12/9/2016

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

1. The contractor agrees to comply with all policies and procedures contained within the *DSAAPD Policy Manual for Contracts*, which is hereby included by reference.
2. The contractor agrees to meet or exceed all minimum service standards as indicated in the service specifications (if applicable) for the contracted service.
3. This agreement is subject to the availability of State and/or Federal funds.
4. The Vendor agrees to adhere to the requirements of DHSS Policy Memorandum # 70, (effective 7/18/2015), and divisional procedures regarding the concept of an inclusive workplace which is accepting of diverse populations in our workforce and actively practices acceptance of diverse populations within our community, through our programs and services we provide to our clients. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Vendor's procedures must include the position(s) responsible for the PM70 process in the vendor's organization. Documentation of staff training on PM70 must be maintained by the Contractor." <http://dhss.delaware.gov/dhss/inclusion/files/pm70inclusionpolicy.pdf>
4. Contractor agrees to utilize secure (through data encryption software) electronic mail (e-mail) for all electronic correspondence that contains program participant (client/consumer) personal information. This includes any and all invoices, program participant service authorization/modification/termination correspondence or required reporting that includes any program participant personal data. Software utilized must be compatible for DSAAPD staff to access the provided information.
5. The contractor agrees to submit quarterly (or monthly) financial reports, program performance reports and other reports as required by the Division on the due dates as specified in the *DSAAPD Policy Manual for Contracts* policies Q and S. Payments for the following months may be withheld if the contractor fails to comply with these requirements.
6. The contractor agrees that the project will be carried out in accordance with the applicable Federal and State statutes, rules, regulations, and the policies and procedures established by the Department and Division, the terms and conditions of this contract and the RFP application as approved by the Department.

7. If, at any given time the Contractor cannot provide the contracted and authorized services, the Division has the authority to remove funds from the contract.
8. The contractor agrees to acknowledge the Division of Services for Aging and Adults with Disabilities as a funding source in all publicity about the project.
9. No part of any funds under this contract shall be used to pay the salary or expenses of any contractor or agent acting for the contractor, to engage in lobbying designed to influence legislation or appropriations pending before the legislature and/or Congress.
10. No part of any funds under this contract shall be used to reimburse or otherwise pay for graduate tuition or graduate student salaries of any kind as part of a Federal grant, sub-grant, State Plan or contract.
11. In cost reimbursement contracts, any funds paid by the Division to the contractor, in excess of actual expenditure, incurred and paid by the contractor, must be returned to the Division.
12. Any changes in the line items of a cost reimbursement budget must be in compliance with the DSAAPD *Policy Manual for Contracts* Policy F. Non-compliance will result in a disallowed cost and audit finding.
13. The period of notice required for the Contractor to terminate or to not renew this agreement without cause is extended to ninety (90) calendar days with written notice to the Division pursuant to Item 14 of the Department boilerplate.
14. The Contractor agrees to list the DSAAPD as a Certificate Holder on their current Insurance Certificate, as required by the Department.
15. The Contractor agrees to provide the Division with a current copy of its Emergency Preparedness Plan upon request.
16. The contractor agrees to cooperate and assist in efforts undertaken by the Division, the U.S. Administration on Aging, or any other agency or organization duly authorized by any of the preceding to evaluate the effectiveness, feasibility and cost of the project.

APPENDIX B: HIPPA Business Associate Agreement

RECITALS

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

WHEREAS, Business Associate provides Emergency Response Systems for Covered Entity pursuant to a contract dated July 1, 2017 and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain Protected Health Information (“PHI”) to Business Associate (collectively, the “Master Agreement”);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **Obligations of Covered Entity.**

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

4. **Term and Termination.**

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

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

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

5. **Miscellaneous.**

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

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

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

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

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

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

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

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

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

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

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

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

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

Covered Entity
By: Signature on File
Name: Albert W. GIBBON
Title: Acting Director
Date: 5-15-17

Business Associate
By: Signature on File
Name: Dawn Fitzgerald
Title: Business Contracts Manager
Date: 5/11/17

APPENDIX C: *Service Specifications*



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging and
Adults with Physical Disabilities

**Emergency Response
Systems
Service Specifications**

Revision Table

Revision Date	Sections Revised	Description
5/12/2015		Revision for 2016 RFP
11/4/2015	1.2	Deleted: <i>It is only operable within a limited range of the base unit.</i>
11/4/2015	1.2	Deleted: <i>in conjunction with a landline telephone or a cellular unit.</i>
11/4/2015	1.3	Deleted: <i>have landline service (definition of landline service would include; POTS-Plain Old Telephone Service, Cable, or VoIP-Voice over Internet Protocol) or mobile phone for wireless service and</i>
11/4/2015	6.5	Added: <i>The provider must perform a Delaware Sex Offender Central Registry background check on all ERS system installers/employees who will come into contact with ERS service participants, using the following online registry: https://desexoffender.dsp.delaware.gov/SexOffenderPublic/ Individuals that are listed in the registry shall be prevented from direct contact of the program participant. Records of this check must be provided to DSAAPD upon request.</i>
2/3/2016	3.1	Revised from three (3) units to two (2) units of service.
2/3/2016	3.1.2	Deleted: <i>An extra pendant (for spouse or replacement)</i>



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging and
Adults with Physical Disabilities

**Emergency Response
Systems
Service Specifications**

1.0 SERVICE DEFINITION

- 1.1 An Emergency Response System (ERS) is an electronic device, which enables a high-risk participant to secure immediate help in the event of a physical, emotional, or environmental emergency.
- 1.2 The ERS system must signal the response center when the help button is activated or when the participant has failed to contact the response center at a specified interval. Once the button is activated, a signal is received by a response center, which is operated by trained staff that is responsible for ensuring a response is provided to meet the emergency.
- 1.3 Participants must agree to have an ERS installed service prior to authorization of the ERS.

2.0 SERVICE GOAL

- 2.1 To promote safety in the home by eliminating the need to have extensive in-home supervision and by alerting the service provider in the event of an emergency.
- 2.2 To forestall or prevent institutionalization.

3.0 SERVICE UNIT

- 3.1 There are two (2) units of service:
 - 3.1.1 A monthly landline equipment rental and monitoring cost.
 - 3.1.2 A monthly wireless/cellular equipment rental and monitoring cost

4.0 SERVICE AREA

- 4.1 Providers must offer statewide service area.

5.0 ELIGIBILITY

- 5.1 The Emergency Response System (ERS) service is for participants who are at risk because of one or more safety-related factors including, but not limited to:
 - 5.1.1 Unsteady gait
 - 5.1.2 Risk of falling
 - 5.1.3 Bed bound
 - 5.1.4 Limited communication ability
 - 5.1.5 Other frailty defined by DSAAPD **AND**
- 5.2 One living arrangement risk factor such as:
 - 5.2.1 Living alone
 - 5.2.2 Alone for significant portions of the day
 - 5.2.3 Primary caregiver has limited ability to attend to consumer's needs.
- 5.3 Participants must be 18 years of age or older.

6.0 SERVICE STANDARDS

- 6.1 The provider must comply with all applicable Federal, State, and local rules and laws applying to the provision of the service.
- 6.2 The provider must maintain the participant's right of privacy and confidentiality.
- 6.3 Participants are referred to the service provider by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) Case Manager. The provider must contact the recipient within five (5) working days of the referral.



**DELAWARE HEALTH AND
SOCIAL SERVICES**

Division of Services for Aging and
Adults with Physical Disabilities

**Emergency Response
Systems
Service Specifications**

- 6.4 The provider must install the equipment within a maximum of ten (10) working days of the referral unless otherwise directed by the DSAAPD Case Manager
- 6.5 The provider must perform a Delaware Sex Offender Central Registry background check on all ERS system installers/employees who will come into contact with ERS service participants, using the following online registry:
<https://desexoffender.dsp.delaware.gov/SexOffenderPublic/>
Individuals that are listed in the registry shall be prevented from direct contact of the program participant. Records of this check must be provided to DSAAPD upon request.
- 6.6 The provider must educate the participant on the operation of the system.
- 6.7 If the provider does not install equipment to begin services within ten (10) working days, the provider must notify the DSAAPD Case Manager regarding the reason for the delay.
- 6.8 The provider must instruct participants of the need to test equipment at the required frequency of testing and the reporting of maintenance problems.
- 6.9 The provider must respond to reports of equipment problems/maintenance requests within forty-eight (48) hours.
- 6.10 The provider must maintain and update the list of emergency contacts as needed.
- 6.11 The provider must provide DSAAPD with a monthly report of ERS activity on request.
- 6.12 The participant is responsible for the proper handling of the emergency response equipment. The provider may bill the participant for lost or damaged equipment
- 6.13 The provider must notify the DSAAPD Case Manager within two (2) working days when it becomes aware that any of the following occurred:
 - 6.11.1 Participant's ERS system is activated.
 - 6.11.2 Participant is hospitalized or institutionalized.
 - 6.11.3 Participant changes addresses.
 - 6.11.5 Participant expires
 - 6.11.6 Participant wants the service withdrawn.
- 6.14 The provider must ensure access to authorized representatives of Delaware Health and Social Services and/or DSAAPD to the participant's case files.
- 6.15 The provider must complete the information at the bottom of the purchase service request form (SRF) stating the date of service acceptance, date of installation, or decline service
- 6.16 The provider must return all completed purchase service referral form to DSAAPD Case Manager and Contract Manager within ten (10) days.
- 6.17 The provider must comply with DSAAPD quality assurance initiatives related to this program.
- 6.18 The provider must cooperate with DSAAPD to resolve problems which threaten participant service.
- 6.19 The provider must notify DSAAPD and participant in writing two (2) weeks prior to termination of services. The notification must include reasons for the termination and steps taken by the provider to resolve the issues.
- 6.20 The provider must give DSAAPD thirty (30) days written notice if terminating five (5) or more participants at a given time.

7.0 INVOICING REQUIREMENTS

- 7.1 Providers will invoice using the DSAAPD Invoicing Workbook (IW) IW-007, pursuant to the DSAAPD Policy Manual for Contracts, Policy Number X-Q, and Invoicing.

APPENDIX D: *Contract Budget*

Emergency Response Systems Budget Workbook

		Agency:	Lifeline Systems Company
		Total Funds Requested:	\$90,000.00
Landline/Cellular Rate	Unit Cost Breakdown	Unit Cost Total	
1	Staff Salaries	\$9.50	
2	Fringe Benefits	\$3.80	
3	Travel & Training		
3a	Travel (Mileage x .40 per mile)	\$0.40	
3b	Training	\$0.10	
4	Contractual		
4a	Rent	\$0.70	
4b	Electricity	\$0.60	
4c	HVAC	\$0.50	
4d	Communications	\$1.40	
4e	Insurance	\$0.45	
4f	Repairs	\$0.25	
4g	Other (specify)		
4h	Other (specify)		
5	Supplies	\$0.20	
6	Equipment	\$2.80	
7	Indirect Costs	\$4.30	
8	Total Unit Monthly Equipment Rental/Monitoring Costs	\$25.00	

	Unit Cost Breakdown	Unit Cost Totals
1	Staff Salaries	
2	Fringe Benefits	
3	Travel & Training	
3a	Travel (Mileage x .40 per mile)	
3b	Training	
4	Contractual	
4a	Rent	
4b	Electricity	
4c	HVAC	
4d	Communications	
4e	Insurance	
4f	Repairs	
4g	Other (specify)	
4h	Other (specify)	
5	Supplies	
6	Equipment	
7	Indirect Costs	
8	Total Unit Monthly Equipment Rental/Monitoring Costs	

APPENDIX E: *DSAAPD Policy Manual for Contracts*

Included for reference

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

APPENDIX F: Request for Proposal

Included for reference HSS-15-046

APPENDIX G: Work Plan

Lifeline PERS Work Plan

Lifeline will provide eligible clients with a PERS, consisting of a portable transmitter (wristband or neck pendant-personal help button), and a voice communicator unit that connects into a modular telephone jack. The PERS will be either a standard landline type or a cellular wireless unit. The PERS system will have a two-way voice communication capability. Lifeline can provide, free of charge, an additional button for the household and we offer specialized accessories for our landline units to meet the needs of the differently abled population.

Client Enrollment and Installation Process

Upon notification by designated staff of a request for installation, Lifeline will contact the client within 5 working days to arrange for a convenient installation appointment with the client within 10 working days of written notification. We will notify your office if we are unable to schedule or complete an installation. Lifeline will install the PERS into a client's home as long as there is a working telephone line or, if cellular service is to be used, that the signal strength is sufficient.

Lifeline will instruct the client in the use and maintenance of their PERS and provide simple written instructions, including how to report a malfunction of the PERS. The installer will complete a Care Plan Agreement with the client. The agreement will confirm the date of the installation, the client's understanding of its use and their responsibilities in regards to the system and include permission for forced entry if need be.

Lifeline will have the client do an actual equipment test in the presence of the Lifeline installer using the personal help button. The process welcomes the client to Lifeline and gives them a sense of security with learning the procedure should an actual emergency ever occur. The client will speak with a trained Personal Response Associate located in our central Monitoring Center and he/she will have an opportunity to ask any questions they may have. At this time, a range test will be performed. The installer will walk throughout the home, usually with the client if he/she is able; to make certain that the client can be heard in various parts of the home.

Lifeline will provide additional follow-up instructions to the client on the use of PERS upon request of the client, your office staff or a family member. A User Manual is left with the client. Lifeline personnel can be available to demonstrate and assist in orienting your office staff to the operation of PERS 24/7.

Upon installation, the client is encouraged to test the equipment monthly. This allows the client to become more familiar and self-assured that someone always is here and cares about their situation. We work with home care workers, families, and nurses to encourage testing as often as possible.

Maintenance of Installed PERS

Lifeline will repair or replace, within 48 hours of notification, any PERS that is not functioning properly. This notification may come from the client, a client's representative or another responsible source. There is no cost to your office for any repairs, maintenance or service calls while the client utilizes our service.

Record Keeping

Lifeline creates, maintains, and protects automated client data records. Lifeline will provide automated client data storage and retrieval systems, including such pertinent client information as:

1. Client name, address, apartment #, telephone number, special directions for quick access, pet(s) names and hidden key location(s) to prevent forced entry
2. Client medical conditions, pertinent history, age, sex, allergies and medications
3. People to notify in an emergency
4. Telephone numbers of Police, Fire, Ambulance, Physician and preferred hospital
5. Signature of client on document also gives permission for forced entry if need be

Lifeline will provide all client data, activity and report forms as requested or directed by your office. Recording and reporting forms include:

1. Client data/profile
2. PERS installation
3. Client orientation verification
4. PERS maintenance and repair record
5. PERS activity monitoring log
6. Monthly client roster
7. PERS removal
8. PERS activation notification

Upon notification by your office that a client service is discontinued, Lifeline will arrange, with the client or client representative, a mutually agreeable appointment for removal of the PERS system within 5 working days of notification