

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES  
DUI EVALUATION & REFERRAL PROGRAM (DERP)  
ISSUED BY DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF  
SUBSTANCE ABUSE AND MENTAL HEALTH  
CONTRACT NUMBER HSS-19-051**

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**I. Overview**

The State of Delaware Department of Health and Social Services, Division of Substance Abuse and Mental Health, seeks professional services to implement DUI **Evaluation & Referral Program (DERP)** services. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ [6981](#) and [6982](#).

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

Public Notice	Date: 08/15/2019
Deadline for Questions	Date: 08/29/2019
Response to Questions Posted by:	Date: 09/12/2019
Deadline for Receipt of Proposals	Date: 10/03/2019 at 11:00 AM (Local Time)
Estimated Notification of Award	Date: 10/30/2019

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the

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applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Vendor shall not store or transfer non-public State of Delaware data outside of the United States. For technology related solicitations, Vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

**PREBID MEETING**

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

**II. Scope of Services**

**ADMINISTRATIVE BACKGROUND**

Delaware Department of Health and Social Services (DHSS), the largest cabinet department, was created in 1970. Its mission is to improve the quality of life for Delaware's citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations. There are 11 Divisions within DHSS plus the Office of the Secretary, which integrates the activities of separate Divisions/units.

The Division of Substance Abuse and Mental Health (DSAMH) serves the adult population (age 18 and older) in need of publicly funded behavioral health services. DSAMH's mission is to promote health and recovery by ensuring Delawareans have access to quality prevention and treatment for mental health, substance use, and gambling conditions.

The State of Delaware, Department of Health and Social Services (DHSS), Division of Substance Abuse and Mental Health (DSAMH) is soliciting proposals for a Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP) to provide DUI offenders with a clinical evaluation and subsequent referral to the appropriate level of care. There are approximately 4500 DUI arrests annually and DUI offenders need to undergo Evaluation and Referral. This program is entirely self-supporting through client fees and payments. DSAMH has developed a Scope of Services (SOW) for DUI- Evaluation & Referral Program (DERP) Services that is included in **Appendix B** of this RFP.

**III. Required Information**

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

**A. Minimum Requirements**

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1. Vendor shall provide responses to the Request for Proposal (RFP) scope of work, as found in Appendix B of this document, and clearly identify capabilities as presented in the General Evaluation Requirements below.
2. Complete all appropriate attachments and forms as identified within the RFP (specified below).
3. Vendors shall provide proposal packages in the following formats:
  - Six (6) paper copies of the vendor proposal paperwork. One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.
  - Five (5) electronic copies of the vendor proposal saved to CD or DVD media disk. Copies of electronic price files shall be a separate file from all other files on the electronic copy. (If Agency has requested multiple electronic copies, each electronic copy must be on a separate computer disk or DVD media disk.

In the proposal this section should be labeled "Section 1: Transmittal/Cover Letter and Required Documents."

4. **Title Page** [*In Hard Copy Format*]. The Title Page shall include:
  - a. The RFP number;
  - b. The RFP subject;
  - c. The name of the applicant;
  - d. The applicant's full address;
  - e. The applicant's telephone number;
  - f. The name and title of the designated contact person;
  - g. The bid opening date (**due date: October 3, 2019, at 11:00 A.M. EDT**).
5. **Transmittal/Cover Letter** [*In Hard Copy Format*]. Must have original signatures (as stated in Page 1 of this RFP).
6. **Provide Delaware license(s) and/or certification(s)** necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of documents or initiate the process of application where required.
7. **Proof of insurance** and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section D, Item 7, subsection g (insurance).
8. **Provide proof of active registry to System for Award Management.** Information about System for Award Management can be found at: <https://www.sam.gov>.
9. **Provide proof of valid Data Universal Number System (DUNS) Number.** Information about obtaining a DUNS number can be found at: <http://www.dnb.com>.

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- 10. Provide proof of Delaware eSupplier Portal registration.** Information on supplier portal registry can be found at: [https://accounting.delaware.gov/w9\\_notice.shtml](https://accounting.delaware.gov/w9_notice.shtml).
- 11. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). Bid marked "ORIGINAL", MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK .** All other copies may have reproduced or copied signatures – Form must be included.
- 12. One (1) completed RFP Exception form (See Attachment 3) –** please check box if no information – Form must be included.
- 13. One (1) completed Confidentiality Form (See Attachment 4) –** please check if no information is deemed confidential – Form must be included.
- 14. Business References (Attachment 5).** Bidders must complete both Attachments, 5A and 5B.
  - a. **Business References (Attachment 5A).** Please provide three references other than State of Delaware contacts and those who will receive no financial gain and are not members of the agency's board.
  - b. **Past and Present Performance Questionnaire (PPQ) (Attachment 5B).** The applicant must:
    - i. Complete the PPQ Cover Letter and Sections A and B of the PPQ for each Business Reference listed in the Attachment 5A.
    - ii. Send copies to the PPQ respondents identified in the Attachment 5A before bid opening date **October 3, 2019**. It is the responsibility of the applicant to follow up with the respondents specified in Attachment 5A and ensure that the Department of Health and Social Services, Division of Substance Abuse and Mental Health receives the completed PPQs no later than bid opening date **October 3, 2019**.

The Applicant shall include Attachment 5A with its proposal; however, the PPQ respondent will send the completed questionnaire directly to the person identified in the PPQ Cover Letter.
- 15. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor –** only provide if applicable.
- 16. Office of Supplier Diversity (OSD) Certification Application (Attachment 10).** Only provide if applicable.
- 17. List of Contracts with State of Delaware (Attachment 9).** Please check box if no contracts have been awarded by the State of Delaware during the last ten (10) years. Otherwise, Applicant shall list all contracts awarded to it or its predecessor firm(s) by the State of Delaware; during the last three years, by State Department, Division, Contact Person (with address/phone number), period of performance and amount. In addition, Applicant shall list any contract awarded to it or its predecessor firm(s) by the State of Delaware during the past ten (10) years if such contract was terminated by

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the State for cause, and shall include an explanation of the circumstances of such termination **(Attachment 9)**. The Evaluation/Selection Review Committee will consider these additional references and may contact each of these sources. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the bid.

**A. General Evaluation Requirements**

Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State. In the proposal, this section should be labeled “**Section 2: Technical Proposal.**”

**1. Bidder Qualifications**

The following areas must be addressed:

- a. Education and Work Experience
- b. Expertise ( for the particular project under consideration)
- c. Demonstrated ability to provide DUI Evaluation and Referral Program services to DUI Offenders of Delaware.
- d. Identify the number and type of staff involved in the project, including identification of the bidder's project manager and summarize staff qualifications related to specific requirements of this project (See Appendix B-Education and Work Experience Requirements);
- e. Include résumés of all the professional. Please redact private identifiers such as home addresses, home phones, and social security numbers; and
- f. Business References and PPQ (Attachment 5a & 5b);
- g. Provide evidence that bidder has the capability to administer all financial and programmatic aspects of this program service; for example, federal, state, local government oversight reports and audits.
  - i. If agency has current or previous contracts with the State of Delaware (Attachment 9), the Evaluation/Selection Review Committee will consider these additional references and may contact each of these sources. Information regarding bidder performance gathered from these sources may be included in the Committee's deliberations and factored in the final scoring of the bid.

**IV. Professional Services RFP Administrative Information**

**A. RFP Issuance**

**1. Public Notice**

Public notice has been provided in accordance with 29 Del. C. [§6981](#).

**2. Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) . Paper copies of this RFP will not be available.

**3. Assistance to Vendors with a Disability**

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

**4. RFP Designated Contact**

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

**Dominique Puleio  
1901 N. DuPont Highway  
Springer Building  
New Castle, DE 19720**

**[DHSS\\_DSAMHCONTRACTS@STATE.DE.US](mailto:DHSS_DSAMHCONTRACTS@STATE.DE.US)**

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

**5. Consultants and Legal Counsel**

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

**6. Contact with State Employees**

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

**7. Organizations Ineligible to Bid**

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

**8. Exclusions**

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

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract:
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or

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other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor:

- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as;
  - 1) Known failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

**B. RFP Submissions**

**1. Acknowledgement of Understanding of Terms**

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

**2. Proposals**

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals.

Each proposal must be submitted with **SIX (6)** paper copies and **FIVE(5)** electronic copy on CD or DVD media disk.

**HARD COPIES**

Each required copy must contain the following sections:

- 1. Technical Proposal
- 2. Business Proposal/Budget – Budget must not be included in or attached to the Technical Proposal.

**ELECTRONIC COPIES**

Each required CD or DVD must contain a minimum of two files as follows:

- 1. Technical Proposal – One document in PDF or Word Format
- 2. Business Proposal – In Excel or Word

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **11:00 AM (Local Time) on October 3, 2019**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

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**Kimberly Jones**  
**Purchasing Services Administrator**  
**Department of Health and Social Services**  
**Procurement Branch**  
**Main Admin Bldg., Sullivan Street**  
**2<sup>nd</sup> floor –Room #257**  
**1901 N. DuPont Hwy**  
**Herman Holloway Campus**  
**New Castle, DE 19720**  
[dhss\\_dms\\_dmsprocure@delaware.gov](mailto:dhss_dms_dmsprocure@delaware.gov)

**Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. HSS-19-051” on the outside of the bid submission package.**

**Bidder name should also be clearly visible on the outside of package.**

Any proposal received after the Deadline for Receipt of Proposals date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery and any costs for returned proposals. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

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

**3. Proposal Modifications**

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

**4. Proposal Costs and Expenses**

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

**5. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through **October 30<sup>th</sup> 2020** The State of Delaware reserves the right to ask for an extension of time if needed.

**6. Late Proposals**



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

**7. Proposal Opening**

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

The Agency will conduct a public opening of proposals and complete a public log of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

**8. Non-Conforming Proposals**

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

**9. Concise Proposals**

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

**10. Realistic Proposals**

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

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

**11. Confidentiality of Documents**

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

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

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

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

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

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed. A vendor's allegation as to its confidential business information shall not be binding on the State. The State shall independently determine the validity of any vendor designation as set forth in this section. Any vendor submitting a proposal or using the procedures discussed herein expressly accepts the State's absolute right and duty to independently assess the legal and factual validity of any information designated as confidential business information. Accordingly, Vendor(s) assume the risk that confidential business information included within a proposal may enter the public domain.

**12. Price Not Confidential**

Vendors shall be advised that as a publically bid contract, no Vendor shall retain the right to declare their pricing confidential.

**13. Multi-Vendor Solutions (Joint Ventures)**

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the State of Delaware and be responsible for the joint

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venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

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

**a. Primary Vendor**

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

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

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.18 regarding multiple source contracting.

**b. Sub-contracting**

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

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

**c. Multiple Proposals**

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

**14. Sub-Contracting**

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting

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assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

**15. Discrepancies and Omissions**

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

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

**a. RFP Question and Answer Process**

The State of Delaware will allow written requests for clarification of the RFP. All questions shall be received no later than **August 29, 2019**. All questions will be consolidated into a single set of responses and posted on the State's website at [www.bids.delaware.gov](http://www.bids.delaware.gov) by the date of **September 12, 2019**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

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

**16. State's Right to Reject Proposals**

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

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the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

**17. State's Right to Cancel Solicitation**

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

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

**18. State's Right to Award Multiple Source Contracting**

Pursuant to 29 *Del. C.* [§ 6986](#), the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

**19. Potential Contract Overlap**

Vendors shall be advised that the State, at its sole discretion, shall retain the right to solicit for goods and/or services as required by its agencies and as it serves the best interest of the State. As needs are identified, there may exist instances where contract deliverables, and/or goods or services to be solicited and subsequently awarded, overlap previous awards. The State reserves the right to reject any or all bids in whole or in part, to make partial awards, to award to multiple vendors during the same period, to award by types, on a zone-by-zone basis or on an item-by-item or lump sum basis item by item, or lump sum total, whichever may be most advantageous to the State of Delaware.

**20. Supplemental Solicitation**

The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

**21. Notification of Withdrawal of Proposal**

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

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

**22. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at [www.bids.delaware.gov](http://www.bids.delaware.gov). The State of Delaware is

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not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

**23. Exceptions to the RFP**

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

**24. Business References**

Provide at least three (3) business references consisting of current or previous customers of similar scope and value using Attachment 5. Include business name, mailing address, contact name and phone number, number of years doing business with, and type of work performed. Personal references cannot be considered.

**25. Award of Contract**

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

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

**a. RFP Award Notifications**

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

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

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

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

**26. Cooperatives**

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation. **State of Delaware terms will take precedence.**

**C. RFP Evaluation Process**

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

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

**1. Proposal Evaluation Team**

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981 and 6982](#). Professional services for this solicitation are considered under 29 *Del. C.* §6982(b). The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Division of Substance Abuse and Mental Health Director, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § [6982\(b\)](#), to award a contract to the successful vendor in the best interests of the State of Delaware.

**2. Proposal Selection Criteria**

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

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

The Team reserves the right to:

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

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**Criteria Weight**

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

Criteria	Weight
Overall Services Description- Programmatic and Technical Merit	25
Effectiveness Indicator- Ability to meet Outlined requirements for service	25
Experience and Reputation	10
Financial Management Indicators	15
Quality Improvement Plan	10
Quality of Response	10
References	5
<b>TOTAL</b>	<b>100</b>
<b>Bidders must circle Yes or No to the following questions and include the answers in their response.</b>	
<b>1) Does the bidder have a Supplier Diversity plan currently in place?</b>	<b>Yes/No</b>
<b>2) Does the bidder have any diverse sub-contractors as outlined in Attachment 8 Tier II Sub-contractors?</b>	<b>Yes/No</b>
<b>3) Does the bidder have a written inclusion policy in place? If yes, attach a clearly identifiable copy of the inclusion plan to your proposal.</b>	<b>Yes/No</b>
<b>Answers to these 3 questions are mandatory and do not affect the weighted evaluation of this proposal. However, an affirmative answer to question 2 may directly impact quarterly sub-contracting reporting as illustrated in Attachment 8 in those instances where an awarded contract includes subcontracting activity.</b>	



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Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

**3. Proposal Clarification**

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

**4. References**

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

**5. Oral Presentations**

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

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

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

**V. Contract Terms and Conditions**

**1. Contract Use by Other Agencies**

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

**2. Cooperative Use of Award**

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for

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permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

**3. As a Service Subscription**

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.

**4. General Information**

- a. The term of the contract between the successful bidder and the State shall be for one (1) year with four (4) optional extensions for a period of one (1) year for each extension.
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
- g. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.
- h. Vendors are not restricted from offering lower pricing at any time during the contract term.

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**5. Collusion or Fraud**

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

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

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

**6. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

**7. Solicitation of State Employees**

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

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a

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person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

**8. General Contract Terms**

**a. Independent Contractors**

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

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may provide working space and sufficient supplies and material to augment the Contractor's services.

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

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

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

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**c. ACA Safe Harbor**

The State and its utilizing agencies are not the employer of temporary or contracted staff. However, the State is concerned that it could be determined to be a Common-law Employer as defined by the Affordable Care Act (“ACA”). Therefore, the State seeks to utilize the “Common-law Employer Safe Harbor Exception” under the ACA to transfer health benefit insurance requirements to the staffing company. The Common-law Employer Safe Harbor Exception can be attained when the State and/or its agencies are charged and pay for an “Additional Fee” with respect to the employees electing to obtain health coverage from the Vendor.

The Common-law Employer Safe Harbor Exception under the ACA requires that an Additional Fee must be charged to those employees who obtain health coverage from the Vendor, but does not state the required amount of the fee. The State requires that all Vendors shall identify the Additional Fee to obtain health coverage from the Vendor and delineate the Additional Fee from all other charges and fees. The Vendor shall identify both the Additional Fee to be charged and the basis of how the fee is applied (i.e. per employee, per invoice, etc.). The State will consider the Additional Fee and prior to award reserves the right to negotiate any fees offered by the Vendor. Further, the Additional Fee shall be separately scored in the proposal to ensure that neither prices charged nor the Additional Fee charged will have a detrimental effect when selecting vendor(s) for award.

**d. Licenses and Permits**

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

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

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

**e. Notice**

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

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CONTRACTS UNIT**

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**1901 N. DUPONT HIGHWAY  
SPRINGER BUILDING  
NEW CASTLE, DE 19720**

**f. Indemnification**

**1. General Indemnification**

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

**2. Proprietary Rights Indemnification**

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

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

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

**g. Insurance**

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.

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2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
  3. During the term of this contract, the vendor shall, at its own expense, also carry insurance minimum limits as follows:
    - a. Vendor shall in all instances maintain the following insurance during the term of this Agreement.
      - i. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
      - ii. Commercial General Liability  
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate.
    - b. The successful vendor must carry at least one of the following depending on the scope of work being delivered.
      - i. Medical/Professional Liability  
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
      - ii. Miscellaneous Errors and Omissions  
\$1,000,000.00 per occurrence/\$3,000,000 per aggregate
      - iii. Product Liability  
\$1,000,000 per occurrence/\$3,000,000 aggregate
    - c. If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage.
      - i. 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.
      - ii. Automotive Property Damage (to others) - \$25,000
  4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded vendor(s).
  5. The State of Delaware shall not be named as an additional insured.
  6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
- h. Performance Requirements**
- The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses

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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.

**i. BID BOND**

There is no Bid Bond Requirement.

**j. PERFORMANCE BOND**

There is no Performance Bond requirement.

**k. Vendor Emergency Response Point of Contact**

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

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

**l. Warranty**

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

**m. Costs and Payment Schedules**

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

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

**n. Price Adjustment**

The Vendor is not prohibited from offering a price reduction on its services or materiel offered under the contract. The State is not prohibited from requesting a price reduction on those services or materiel during the initial term or any subsequent options that the State may agree to exercise.



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If agreement is reached to extend this contract beyond the initial One (1) year period, Department of Health and Social Services, Division of Substance Abuse and Mental Health shall have the option of offering a determined price adjustment that shall not exceed the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

**o. Liquidated Damages**

The State of Delaware may include in the final contract liquidated damages provisions for non-performance.

**p. Dispute Resolution**

At the option of, and in the manner prescribed by the, Department of Health and Social Services, Division of Substance Abuse and Mental Health, 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.

If the matter is not resolved by negotiation, as outlined above, or, alternatively, Agency 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 Agency, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the Agency Director, for final and binding arbitration. Agency 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.

**q. Termination of Contract**

The contract resulting from this RFP may be terminated as follows Department of Health and Social Services, Division of Substance Abuse and Mental Health.

**1. Termination for Cause**

If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all

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finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

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

**2. Termination for Convenience**

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

**3. Termination for Non-Appropriations**

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

**r. Non-discrimination**

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

**s. Covenant against Contingent Fees**

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of

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understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**t. Vendor Activity**

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

**u. Vendor Responsibility**

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this RFP whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of Department of Health and Social Services, Division of Substance Abuse and Mental Health.

**v. Personnel, Equipment and Services**

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

**w. Fair Background Check Practices**

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

**x. Vendor Background Check Requirements**

Vendor(s) selected for an award that access state property or come in contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises contracts.

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Unless otherwise directed, at a minimum, this shall include a check of the following registry:

- Delaware Sex Offender Central Registry at:  
<https://sexoffender.dsp.delaware.gov/>

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

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

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

**y. Drug Testing Requirements for Large Public Works**

Pursuant to 29 Del.C. [§6908\(a\)\(6\)](#), effective as of January 1, 2016, OMB has established regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds. The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. [§6962](#).

Final publication of the identified regulations can be found at the following:  
[4104 Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects](#)

**z. Work Product**

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

**aa. Contract Documents**

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall

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

**bb. Applicable Law**

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

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

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

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

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

**cc. 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.

**dd. 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

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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.

**ee. Scope of Agreement**

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

**ff. Affirmation**

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

**gg. Audit Access to Records**

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

**hh. IRS 1075 Publication (If Applicable)**

**Performance**

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

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All work will be performed under the supervision of the contractor or the contractor's responsible employees.

The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

Any Federal tax returns or Federal tax return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the contractor is prohibited.

All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

No work involving returns and return information furnished under this contract will be subcontracted without prior written approval of the IRS.

The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

### **Criminal/Civil Sanctions**

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known

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in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need-to-know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 ) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **Inspection**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access,



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store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

**ii. Other General Conditions**

1. **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
2. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
3. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
4. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
5. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
6. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
7. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
8. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
9. **Billing** – The successful vendor is required to “Bill as Shipped” to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
10. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e. speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.
11. **W-9** - The State of Delaware requires completion of the Delaware Substitute Form W-9 through the Supplier Public Portal at <https://esupplier.erp.delaware.gov> to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record.
12. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **HSS-19-051** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.

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- 13. Purchase Card** – The State of Delaware intends to maximize the use of the 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.
- 14. Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

## **VI. RFP Miscellaneous Information**

**1. No Press Releases or Public Disclosure**

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

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

**2. Definitions of Requirements**

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

**3. Production Environment Requirements**

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

## **VII. Attachments**

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

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions

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- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5A – Business References
- Attachment 5B – Past Performance Questionnaire
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2<sup>nd</sup> Tier Spend) Report
- Attachment 9 – State Contracts List
- Attachment 10- Office of Supplier Diversity Application
- Appendix A – Minimum Mandatory Submission Requirements
- Appendix B – Scope of Work / Technical Requirements
- Appendix C- Pricing Structure
- Appendix D- Divisional Requirements
- Appendix E- Professional Services Agreement

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**IMPORTANT – PLEASE NOTE**

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

**REQUIRED REPORTING**

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

A complete and accurate Usage Report (Attachment 7) shall be furnished in an Excel format and submitted electronically, no later than the 15<sup>th</sup> (or next business day after the 15<sup>th</sup> day) of each month, detailing the purchasing of all items and/or services on this contract. The reports shall be completed in Excel format, using the template provided, and submitted as an attachment to Department of Health and Social Services, Division of Substance Abuse and Mental Health, with a copy going to the contract officer identified as your point of contact. Submitted reports shall cover the full month (Report due by January 15<sup>th</sup> will cover the period of December 1 – 31.), contain accurate descriptions of the products, goods or services procured, purchasing agency information, quantities procured and prices paid. Reports are required monthly, including those with “no spend”. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result in corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

**Reporting is required by Executive Order.**

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

Accurate 2nd tier reports shall be submitted to the contracting Agency’s Office of Supplier Diversity at [vendusage@delaware.gov](mailto:vendusage@delaware.gov) on the 15<sup>th</sup> (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last

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day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

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Attachment 1

**NO PROPOSAL REPLY FORM**

**Contract No. HSS-19-051                      Contract Title: Driving Under the Influence (DUI)-  
Evaluation & Referral Program (DERP)**

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

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

- \_\_\_\_\_ 1.            We do not wish to participate in the proposal process.
- \_\_\_\_\_ 2.            We do not wish to bid under the terms and conditions of the Request for Proposal document.  
Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 3.            We do not feel we can be competitive.
- \_\_\_\_\_ 4.            We cannot submit a Proposal because of the marketing or franchising policies of the  
manufacturing company.
- \_\_\_\_\_ 5.            We do not wish to sell to the State. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 6.            We do not sell the items/services on which Proposals are requested.
- \_\_\_\_\_ 7.            Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
SIGNATURE

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

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

**PLEASE FORWARD NO PROPOSAL REPLY FORM TO THE CONTRACT OFFICER IDENTIFIED.**

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**Attachment 2**

**CONTRACT NO.:** HSS-19-051

**CONTRACT TITLE:** Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP)

**DEADLINE TO RESPOND:** October 3<sup>RD</sup>, 2019 at 11:00a.m. (Local Time)

**NON-COLLUSION STATEMENT**

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Health and Social Services, Division of Substance Abuse and Mental Health.

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

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Health and Social Services, Division of Substance Abuse and Mental Health.

COMPANY NAME \_\_\_\_\_ Check one)

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

NAME OF AUTHORIZED REPRESENTATIVE

(Please type or print)

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

COMPANY ADDRESS \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

FEDERAL E.I. NUMBER \_\_\_\_\_ STATE OF DELAWARE  
LICENSE NUMBER \_\_\_\_\_

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

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

PURCHASE ORDERS SHOULD BE SENT TO:  
(COMPANY NAME) \_\_\_\_\_

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

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

YES \_\_\_\_\_ NO \_\_\_\_\_ if yes, please explain \_\_\_\_\_

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

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_





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**Attachment 4**

**Contract No. HSS-19-051**

**Contract Title: Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP)**

CONFIDENTIAL INFORMATION FORM

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

Confidentiality and Proprietary Information

**Note: Vendor may use additional pages as necessary, but the format shall be the same as provided above.**

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**Attachment 5a**

**Contract No. HSS-19-051**

**Contract Title: Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP)**

**BUSINESS REFERENCES**

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

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

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

1. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


2. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


3. **Contact Name & Title:**

**Business Name:**

**Address:**

**Email:**

**Phone # / Fax #:**

**Current Vendor (YES or NO):**

**Years Associated & Type of  
Work Performed:**


**STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.**

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Attachment 5B

**PAST AND PRESENT PERFORMANCE QUESTIONNAIRE**

**COVER LETTER**

SUBJECT: Request for Past Performance Evaluation

TO: .....

You have been identified as a point of contact for a past and/or present performance evaluation of the firm listed on the attached questionnaire. This firm is currently being considered for Driving Under the Influence (DUI) –Evaluation and Referral Program (DERP) contract at the Delaware Department of Health and Social Services, Division of Substance Abuse and Mental Health.

Your prompt attention to this questionnaire will be greatly appreciated. If you have any questions concerning this request, I can be contacted at (302) 255-9466 or DHSS\_DSAMHCONTRACTS@state.de.us

Sincerely,

**Dominique Puleio**

*Procurement Coordinator, Contracts Unit*

Delaware Department of Health and Social Services

Division of Substance Abuse and Mental Health

Herman Holloway Campus

Springer Building

1901 North DuPont Highway

New Castle, DE 19720

1 Attachment

Past and Present Performance Questionnaire

STATE OF DELAWARE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH  
**PAST AND PRESENT PERFORMANCE QUESTIONNAIRE**

**A. GENERAL INFORMATION:** Respondent Please correct any information below known to be inaccurate:

Contractor's Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
Address: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
\_\_\_\_\_ Email Address: \_\_\_\_\_  
\_\_\_\_\_ Point of Contact: \_\_\_\_\_

Project Title and Brief Description of Work\*: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Number\*: \_\_\_\_\_ Contract Location\*: \_\_\_\_\_

Original Contract Amount (Award Amount)\*: \_\_\_\_\_

Final Contract Amount\*: \_\_\_\_\_

Explain Differences: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contract Award Date or Performance Start Date (mm/dd/yyyy)\*: \_\_\_\_\_

Contract Expected Completion Date or Performance End Date (mm/dd/yyyy)\*: \_\_\_\_\_

Contract Actual Completion Date or Performance End Date (mm/dd/yyyy)\*: \_\_\_\_\_

Contract Type\*: ☐ Firm-Fixed Price ☐ Cost Reimbursement  
☐ Other (Please Specify): \_\_\_\_\_

Contractor performed as the ☐ **Prime** Contractor ☐ **Sub**-Contractor ☐ **Key** Personnel.

**\* Note: If Contractor holds or has held other contracts with your agency/organization in the last 3 years, please complete separate evaluation forms for those contracts as well.**

**B. RESPONDENT INFORMATION:**

Name of Respondent: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\_\_\_\_\_ Fax Number: \_\_\_\_\_  
\_\_\_\_\_ Email Address: \_\_\_\_\_

Date Questionnaire was completed (mm/dd/yyyy): \_\_\_\_\_

**C. FAX COMPLETED SURVEY FORM TO: 302-255-9395**

OR

**E-MAIL COMPLETED SURVEY FORM TO: [DHSS\\_DSAMHCONTRACTS@state.de.us](mailto:DHSS_DSAMHCONTRACTS@state.de.us)**

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- D. PERFORMANCE INFORMATION:** Choose the appropriate letter on the scale (E, G, A, M, U, and N) that most accurately describes the contractor's performance or situation. **PLEASE PROVIDE A NARRATIVE EXPLANATION FOR ANY RATINGS OF M or U.**

RATING		DEFINITION	NOTE
<b>E</b>	<b>Exceptional</b>	Performance meets contractual requirements and exceeds many to the Government's/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with no more than a few minor problems for which corrective actions taken by the Contractor were highly effective.	An Exceptional rating is appropriate when Contractor successfully performed multiple significant events that were of benefit to the Government/Owner. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there should have been NO significant weaknesses identified.
<b>G</b>	<b>Good</b>	Performance meets contractual requirements and exceeds some to the Government's/Owner's benefit. The contractual performance of the element or sub-element being assessed was accomplished with no more than some minor problems for which corrective actions taken by the Contractor were effective.	A Good rating is appropriate when the Contractor successfully performed a significant event that was a benefit to the Government/Owner. There should have been NO significant weaknesses identified.
<b>A</b>	<b>Acceptable</b>	Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the Contractor appear or were satisfactory.	A Satisfactory or Acceptable rating is appropriate when there were only minor problems, or major problems that the Contractor recovered from without impact to the contract. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that Contractors will not be assessed a rating lower than Acceptable solely for not performing beyond the requirements of the contract.
<b>M</b>	<b>Marginal</b>	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the Contractor has not yet identified corrective actions or the Contractor's proposed actions appear only marginally effective or were not fully implemented.	A Marginal rating is appropriate when a significant event occurred that the Contractor had trouble overcoming which impacted the Government/Owner.
<b>U</b>	<b>Unacceptable</b>	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the Contractor's corrective actions appear or were ineffective.	An Unsatisfactory or Unacceptable rating is appropriate when multiple significant events occurred that the Contractor had trouble overcoming and which impacted the Government/Owner. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unacceptable rating.

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<b>N</b>	<b>Neutral</b>	Performance was not observed or not applicable to the current effort being reported against.	Neutral rating will be neither positive nor negative.
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CONTRACTOR'S NAME: \_\_\_\_\_ CONTRACT NUMBER: \_\_\_\_\_

**Note:** Include this information on each page of the questionnaire form to ensure there is no mix up in information among contracts surveyed for respective primes/subs, etc.

**Place an "X" on the appropriate column using the definitions matrix above.**

	The contractor:	E	G	A	M	U	N
1.	Provided experienced managers and supervisors with the technical and administrative abilities needed to meet contract requirements.	E	G	A	M	U	N
2.	Demonstrated ability to hire, maintain, and replace, if necessary, qualified personnel during the contract period.	E	G	A	M	U	N
3.	Delegated authority to project managers and supervisors commensurate with contract requirements.	E	G	A	M	U	N
4.	Home office participated in solving significant local problems.	E	G	A	M	U	N
5.	Followed approved quality control plan.	E	G	A	M	U	N
6.	Provided effective quality control and/or inspection procedures to meet contract requirements.	E	G	A	M	U	N
7.	Corrected deficiencies in timely manner and pursuant to their quality control procedures.	E	G	A	M	U	N
8.	Provided timely resolution of contract discrepancies.	E	G	A	M	U	N
9.	Identified problems as they occurred.	E	G	A	M	U	N
10.	Suggested alternative approaches to problems.	E	G	A	M	U	N
11.	Displayed initiative to solve problems.	E	G	A	M	U	N
12.	Developed realistic progress schedules.	E	G	A	M	U	N
13.	Met established project schedules.	E	G	A	M	U	N
14.	Provided timely resolution of warranty defects.	E	G	A	M	U	N
15.	Was responsive to contract changes.	E	G	A	M	U	N
16.	Provided adequate project supervision.	E	G	A	M	U	N
17.	Obtained consent of surety for increases in bonding as work-in-progress increased.	E	G	A	M	U	N
18.	Paid subcontractors/suppliers in a timely manner.	E	G	A	M	U	N
19.	Provided accurate and complete line item cost proposals including all aspects of work required for each task.	E	G	A	M	U	N
20.	Cooperated with Government personnel after award.	E	G	A	M	U	N
21.	How would you rate the contractor's overall performance?	E	G	A	M	U	N
22.	Was the contractor ever issued a cure or show cause notice under the referenced contract? If yes, explain outcome in "remarks."						YES NO
23.	Would you award another contract to this contractor? If not, explain in "remarks."						YES NO

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CONTRACTOR'S NAME: \_\_\_\_\_

CONTRACT NUMBER \_\_\_\_\_

Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**DEFINITIONS:** To attain as much consistency as possible in the rating process it is necessary to apply consistent standards. When you provide remarks please refer to the following definitions and commonly assigned words for different rating levels.

TERM	DEFINITION	RATING	CONFIDENCE WORDS
<b>Significant Strength</b>	An outstanding or exceptional aspect of the Contractor that appreciably increases the Government's/Owner's confidence in the Contractor's ability to successfully perform contract requirements	<b>Exceptional</b>	Outstanding - High Confidence words: Exceptional, Superior, Complete, Outstanding
<b>Strength</b>	A significant outstanding or exceptional aspect of a Contractor that exceeds the minimum evaluation standard	<b>Good</b>	Excellent - Significant or Substantial Confidence words: Excellent, Admirable, Commendable
<b>Weakness</b>	A flaw in the Contractor that decreases the Government's/Owner's confidence in the Contractor's ability to successfully perform contract requirements	<b>Acceptable</b>	Acceptable – Satisfactory Confidence words: Adequate, Acceptable, Sufficient, Thorough
<b>Significant Weakness</b>	A Contractor's flaw that appreciably increases the chance of unsuccessful performance	<b>Marginal</b>	Marginal- Little or Limited Confidence words: Inadequate, Insufficient, Incomplete, Impaired, Substantially Doubtful
<b>Deficiency</b>	An aspect of the Contractor that fails to satisfy Government's/Owner's minimum requirements or a combination of significant weaknesses in a Contractor that raises the risk of unsuccessful contract performance to an unacceptable level.	<b>Unacceptable</b>	Unsatisfactory – No Confidence words: Unacceptable, Scarce, Flawed, Deficient, Extremely Doubtful
		<b>Neutral</b>	Unknown Confidence words: not applicable, irrelevant, incomparable

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**Attachment 6**

**SUBCONTRACTOR INFORMATION FORM**

<b>PART I – STATEMENT BY PROPOSING VENDOR</b>		
1. CONTRACT NO. <b>HSS-19-051</b>	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification:  Certification Number: _____	
b. Mailing Address:	<div style="display: flex; justify-content: space-between;"> <div>4d. Women Business Enterprise</div> <div><input type="checkbox"/> Yes</div> <div><input type="checkbox"/> No</div> </div> <div style="display: flex; justify-content: space-between;"> <div>4e. Minority Business Enterprise</div> <div><input type="checkbox"/> Yes</div> <div><input type="checkbox"/> No</div> </div> <div style="display: flex; justify-content: space-between;"> <div>4f. Disadvantaged Business Enterprise</div> <div><input type="checkbox"/> Yes</div> <div><input type="checkbox"/> No</div> </div> <div style="display: flex; justify-content: space-between;"> <div>4g. Veteran Owned Business Enterprise</div> <div><input type="checkbox"/> Yes</div> <div><input type="checkbox"/> No</div> </div> <div style="display: flex; justify-content: space-between;"> <div>4h. Service Disabled Veteran Owned Business Enterprise</div> <div><input type="checkbox"/> Yes</div> <div><input type="checkbox"/> No</div> </div>	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (Signature)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
<b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>		
9a. NAME OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

**\* Use a separate form for each subcontractor**



## Attachment 7

## State of Delaware - Monthly Usage Report

Contract Number / Title: \_\_\_\_\_

Check here if there were no  
transactions for the reporting period

Report Start Date: \_\_\_\_\_  
Report End Date: \_\_\_\_\_  
Today's Date: \_\_\_\_\_

**Note:** A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to [dsamhbusinessoperations@delaware.gov](mailto:dsamhbusinessoperations@delaware.gov). It shall contain the six-digit department and organization code for each agency and school district.

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Attachment 8

**SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY**

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

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

Completed reports shall be saved in an Excel format, and submitted to the following email address: [vendorusage@delaware.gov](mailto:vendorusage@delaware.gov)

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**Attachment 9**

**Contract No. HSS-19-051**

**Contract Title: Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP)**

**LIST OF CONTRACTS WITH STATE OF DELAWARE**

- ☐ By checking this box, the Vendor acknowledges that they or their predecessor organization(s) have not had any contracts awarded by the State of Delaware during the last three (3) years and have not had any terminated contract for cause in the past ten (10) years.

Contract Number	Contract Title	Contract Award Date Date mm/dd/yyyy	Contract Termination Date Date mm/dd/yyyy	Contract Amount	State Department, Division, Office	Contact Person (name, address, phone, email)

\* use additional copies of the form if more space is needed.

\*\* if any contract was terminated by the State for cause in the past 10 years include an explanation of the circumstances of such termination under contract termination column.

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Attachment 10

**State of Delaware  
Office of Supplier Diversity  
Certification Application**

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

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

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



**Complete application and mail, email or fax to:**

Office of Supplier Diversity (OSD)  
100 Enterprise Place, Suite 4  
Dover, DE 19904-8202

Telephone: (302) 857-4554 Fax: (302) 677-7086

Email: [osd@state.de.us](mailto:osd@state.de.us)

Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

**THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.  
THE OSD WILL NOT ACCEPT ANY VENDOR BID RESPONSE PACKAGES.**

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**Appendix A - MINIMUM MANDATORY SUBMISSION REQUIREMENTS**

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

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.
3. Pricing as identified in the solicitation
4. One (1) complete, signed and notarized copy of the non-collusion agreement (See Attachment 2). Bid marked "ORIGINAL", **MUST HAVE ORIGINAL SIGNATURES AND NOTARY MARK**. All other copies may have reproduced or copied signatures – Form must be included.
5. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
6. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.
7. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.
8. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor – only provide if applicable.
9. One (1) complete OSD application (See link on Attachment 9) – only provide if applicable

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

Vendors shall provide proposal packages in the following formats:

1. Six (6)) paper copies of the vendor proposal paperwork. **One (1) paper copy must be an original copy, marked "ORIGINAL" on the cover, and contain original signatures.**
2. Five (5) electronic copy of the vendor proposal saved to CD or DVD media disk. Copy of electronic price file shall be a separate file from all other files on the electronic

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copy. (If Agency has requested multiple electronic copies, each electronic copy must  
be on a separate computer disk or media).

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**Appendix B SCOPE OF WORK AND TECHNICAL REQUIREMENTS**  
**Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP)**

**BACKGROUND**

The State of Delaware, Department of Health and Social Services (DHSS), Division of Substance Abuse and Mental Health (DSAMH) is soliciting proposals for a Driving Under the Influence (DUI)-Evaluation & Referral Program (DERP) to provide DUI offenders with a clinical evaluation and subsequent referral to the appropriate level of care. There are approximately 4500 DUI arrests annually and DUI offenders need to undergo Evaluation and Referral. This program is entirely self-supporting through client fees and payments.

**PURPOSE**

The Bidder(s) shall provide all materials and labor to satisfy the State of Delaware's need for an Evaluation and Referral program as described herein. Each proposal must contain a detailed description of how the bidder will provide the service outlined in this RFP to include customer service history. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the offeror will provide that are not mentioned in this RFP

Unless stated otherwise, the quantities given in the RFP are to be considered to be approximate only and are given as a basis for the comparison of bids. Bidders shall recognize there are no guaranteed minimum contract quantities or values associated with this solicitation

**REQUIRED CLINICAL SERVICES - Effectiveness Indicator**

- Client Referral: The bidder must describe how the program will receive and document referrals, maintain client files, track client progress, and process completion information. Referrals to the program may come from a variety of sources, including but not limited to the Division of Motor
  - Vehicles, the Courts, and client self-referrals. Clients referred to the Delaware Evaluation and Referral program must have access to services within ten days of court appearance, DUI arrest or DMV referral.
- Intake and Evaluation: The bidder must provide a detailed description of the intake and evaluation procedures, including written admission criteria. Details of the evaluation process and instruments used for evaluation must be outlined. These instruments must include the following:
  - A questionnaire
  - Written and verbal evaluation
  - Personal interview
  - Review of offender's driving record
  - Essay questions designed and proven to be effective in evaluation
  - An interpretation of the recorded blood alcohol concentration level
  - Client rights/confidentiality issues
  - Mental health screening

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- Substance abuse screening
- Assessment of Individual Treatment Needs: The bidder must state how client needs will be assessed. In addition, the needs of diverse populations must be met. All services must address the need for, and availability of interpreters (on-site or readily available) for non-English speaking clients, as well as accommodations for clients with disabilities. The vendor must comply with all the terms, requirements, and provisions of the Americans with Disabilities Act, the Civil Rights Act, the Rehabilitation Act of 1973, and any other federal, state, local, or other anti-discriminatory act, law, statute, regulation or policy along with all amendments to and revisions of these laws.
- Referral Process: The bidder must address the method of developing and documenting a referral for each client. The evaluation and referral process must be developed within the constraints of a time-limited program of treatment consistent with the nature and intended function of the DUI Education and Outpatient treatment programs. In addition, this section must describe the mechanism developed to ensure that significant members of the evaluation and referral team meet to evaluate the appropriateness of the referrals. Provisions must be made for periodic clinical supervisory notations in each clinical record pertaining to appropriate referral procedures and outcomes.
- Referral Timeframe: The bidder must outline how a referral will be forwarded to the appropriate treatment agency within designated timeframes outlined in the Administrative Performance Measures on pages 57 & 63 of this RFP. Further, the vendor must detail how they anticipate case management of client records to be handled from time of initial evaluation through completion status notification. A “typical” client experience should be detailed.
- Referral of Client to Other Services: The bidder must describe the process by which clients will be referred to other service providers (outside the DUI system), when deemed clinically appropriate (i.e. residential treatment).
- Out-of-State Case Management: The bidder must describe in detail the process by which out-of-state clients will be case managed. Case management of out-of-state clients is the sole responsibility of the Evaluation and Referral program.
- DUI Tracking System: The Contracted vendor will be responsible for updating any information regarding client contact, program referral, program completion, final notification, as well as any and all other contact with the client while involved in the DUI system.
  - In addition, the vendor must maintain the validity, comprehensiveness, and security of the DUI electronic tracking system at all times. Additional client information, including driving record, results of screening and evaluation tests, clinical assessment resulting in referral, prior arrest record, associated BAC's, and all other pertinent client information must be available to other provider agencies and other organizations and/or individuals that are part of the DUI system.
- Conflict of Interest: The contracted vendor providing the evaluation and referral services is not eligible to provide direct education or outpatient treatment services for the DUI client.



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- Standard Operating Procedures Manual: The contracted vendor is required to follow the requirements in the Standard Operating Procedures manuals provided by the Office of Highway Safety. Further, the contracted vendor must update the manuals as updates are provided; all staff must be made aware of changes and are expected to implement those changes as they occur.

## ADMINISTRATIVE REQUIREMENTS

- Cost Schedule: The following fees have been established by the Department of Health and Social Services, Division of Substance Abuse and Mental Health and are set forth in currently published regulations [Delaware Administrative Code Title 2, Section 1201](#) including any subsequent regulation changes by legislature.
  - Evaluation and Referral Process: The fee of \$100.00 shall be charged to clients receiving the service of an evaluation and subsequent referral to an education or outpatient treatment program.
  - Missed Appointments: The fee of \$35.00 shall be charged to clients failing to appear for a scheduled appointment.
  - Case Management: The fee of \$125.00 shall be charged to out-of-state clients for the service of case managing their evaluation, referral, and discharge paperwork. This process will be handled exclusively by the Evaluation and Referral program.
  - Administrative Re-Entry: The fee of \$35.00 shall be charged to those clients determined non-compliant and wishing to re-enter the program, in the event the client does not need a new evaluation. Clients requiring a new evaluation will be processed and charged the standard evaluation and referral fee.
- Administrative Performance Measures: The selected vendor will agree to meet the following expectations:
  - The average duration to process initial client referral to the Evaluation and Referral program shall not exceed five (5) days.
  - The average duration from evaluation to program referral shall not exceed five (5) working days.
  - Notification of client discharge status from the Evaluation and Referral program to initial referral source shall not exceed five (5) working days.
- Minimum Qualifications for Staff: The following qualifications are required of all clinical staff responsible for client evaluation and referral. Verification of staff qualifications must be made available to the DUI Coordinator with DSAMH
  - Minimum 2-year degree in Counseling, Psychology, Sociology, or other related field.

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- One year's experience as a substance abuse counselor.

**MISCELLANEOUS REQUIREMENTS**

- Flexibility: The awarded vendor must provide scheduled appointments based on a flexible scheduling plan taking into consideration client special needs, transportation availability, fee availability, and other issues specific to this client population.
- Availability: The awarded vendor must have an adequate telephone system that allows clients to access a live person to schedule appointments. Client time spent on hold should be minimal. If a client does get a voice mail system during normal operating hours, it should be only a contingent of heavy call volumes and not standard procedure. A system should be in place to ensure all clients that leave voice mail messages are having calls returned in a timely manner. The vendor should have staff available that is fully versed in the issues surrounding the DUI client population. The staff should understand and anticipate client confusion, be prepared to answer questions, and provide assistance and direction to ensure the client receives the necessary information. Clerical and scheduling staff must be well trained in quality customer service techniques and understand the importance of treating clients cordially and with respect.
- Accounting: The awarded vendor must maintain accurate records; accounting and fiscal records must be in accordance with established and recognized methods of accounting. These records must adequately and properly reflect services delivered or provided in the performance of this contract.
  - The vendor agrees to hire an independent auditor to perform an annual audit of accounts and provide a copy of the audit to the Secretary of the Department of Health and Social Services. Records pertaining to contractor performance and expenditures must be maintained for a period of three years following expiration or termination of the contract, or following any resulting litigation.
  - All client files generated by the vendor shall be made available to the State of Delaware, Division of Substance Abuse and Mental Health's DUI Coordinator for monitoring and evaluation purposes.
- Point of Contact: The contracted vendor shall have a minimum of two points of contact. State of Delaware, Division of Substance Abuse and Mental Health will be provided two names, direct contact information, and the designated order of contact. In the event that both points of contact will be out of the office at the same time, an alternate contact must be provided during the interim.

**FINANCIAL MANAGEMENT INDICATOR**

- Budget Summary: The proposal should include a program budget accompanied by a budget narrative. The budget should show the total anticipated operating cost, based on a client population of approximately 5,000 statewide clients per year. If the proposed

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program shares functions or facilities with another program, the cost sharing arrangement should be described in detail. Vendors are reminded that State funding cannot support the DUI program activities outlined by this RFP. The DERP program is funded through client fees as currently outlined in the [Delaware Administrative Code Title 2, Section 1201](#).

\*This includes all currently published regulations and any subsequent regulation changes by legislature.

- Revenue Projections: The DUI evaluation and referral program must be self-supporting. A schedule of anticipated revenues must be presented in sufficient detail to reasonably assure that the program will be able to support and maintain the quality of its operations out of client fees.

### **PROHIBITED ACTIVITIES**

- Subcontracting is prohibited under this contract.

### **TARGET POPULATION**

An estimated 4,500 DUI offenders within the state of Delaware annually

### **SERVICE AREA**

Contractor(s) will provide services at their proposed location. The vendor must identify the physical location area within which the program will operate. The intent of this RFP is to multi-award the contract to adequately accommodate the client population.

### **Service Capacity**

The bidder must present the proposed program capabilities in terms of the minimum and maximum number of clients. An estimated 4,500 DUI arrests occur annually. Bidders are reminded that State funding cannot support the DUI program activities outlined by this RFP. The DERP program is funded through client fees as outlined in the [Delaware Administrative Code Title 2, Section 1201](#).

### **ELIGIBILITY**

- The bidder must present a plan for certification of all counseling staff. All staff must be certified in accordance with current licensing standards set by the Division of Substance Abuse and Mental Health. The vendor must possess a current license and meet program licensure standards as defined by [Delaware Administrative Code Title 16, Section 6001](#) as regulated by the State of Delaware, Division of Substance Abuse and Mental Health. Vendors must provide copies of licensure reports for the three most recent years (or as many years as the vendor has been licensed, if less than three years).
- Any organizations whose hiring and operational practices comply with all federal and State of Delaware laws and regulations is eligible to apply for funds when a Request for Proposal (RFP) is advertised. The Contractor will be required to provide evidence that both the organization and the lead management staff proposed for this project have the knowledge and experience, as well as the depth of staffing, to provide the required services.
- All awarded contractors are required to provide or obtain a unique National Provider Identification number (NPI) for use to be restricted to this program.

### **WORK PLAN/PROPOSED METHODOLOGY**

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**A. OVERALL SERVICES DESCRIPTION**

**PROGRAMMATIC – TECHNICAL MERIT**

- Organization: The bidder must provide a description of the organization responding to the Request for Proposals.
- Experience: The bidder must present evidence of experience in providing drug and alcohol evaluation and referral case management and/or similar services sufficient to indicate the capacity to successfully manage and operate the DUI Evaluation and Referral program.
- Program Philosophy: The bidder must describe the program's philosophy of services as it relates to the population to be served. The philosophy should reflect the vendor's understanding of the needs of chemically dependent individuals in general, and the special education and treatment needs of DUI offenders in particular.
- Goals and Objectives: The bidder must outline goals and objectives as they relate to the services to be provided. The goals and objectives should flow from the program's philosophy and lead to a description of the services that will be provided to the "typical" client.
- Services to be Provided: Services to be provided must be described in detail, including the procedures and methods which the program intends to employ in order to evaluate, refer, and case manage clients efficiently and effectively. Consideration must also be given to clients outside the State of Delaware who may seek services from this program. The relationship of the proposed DUI evaluation and referral services to the other elements of the DUI system (Law Enforcement, Court system, Corrections system, Motor Vehicles, Education and Outpatient programs) must be fully considered in developing and describing the services to be provided. (Note: the evaluation and referral agency serves as the case manager of all clients and as the liaison between agencies involved in the DUI system.)
- Case Management: The methodology to be used in case management should be outlined in detail.
  - Consideration of length of services is essential. Awarded Vendors must follow the Standard Operating Procedures for the DUI Evaluation and Referral Program as required by [Delaware Administrative Code, Title 21, Section 1204](#).
- Indigent Client Payment Plan: The awarded vendor must have in place written policies and procedures for providing services and payment plans for indigent clients.
- Client Confidentiality: The bidder must describe internal controls taken to ensure the confidentiality of client information, in accordance with Federal confidentiality regulations.

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- Service Area: The bidder must identify the physical location area within which the program will operate. The program must provide locations reasonably accessible to residents in all three counties of Delaware.
- Service Capacity: The bidder must present the proposed program capabilities in terms of the minimum and maximum number of clients. An estimated 4,500 DUI arrests occur annually.
- Certification: The bidder must present a plan for certification of all counseling staff. All staff must be certified in accordance with current licensing standards set by the Division of Substance Drug Abuse and Mental Health. The bidder must possess a current license and meet program licensure standards as defined by [Delaware Administrative Code Title 16, Section 6001](#) as regulated by the State of Delaware, Division of Substance Abuse and Mental Health. Bidders must provide copies of licensure reports for the three most recent years (or as many years as the bidder has been licensed, if less than three years).
- Staff and Staff Development: The bidder must provide information of staffing of the proposed DUI Evaluation and Referral program. A definitive staffing pattern should be presented consistent with the proposed program Service Area and Service Capacity. At a minimum, the bidder must present a proposed staff-to-client ratio, job descriptions, and minimum requirements. A resume of key staff persons should be part of this proposal. The bidder must ensure that staff persons are knowledgeable and qualified to provide the proposed services. A staff training and/or orientation schedule must be presented as well as a training manual or proposed timeline when a staff training manual will be developed.

## GENERAL REQUIREMENTS FOR REPORTING

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

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

## REPORTING REQUIREMENTS

Liaison/Reporting: The relationship of the Evaluation and Referral program to other elements of the DUI system requires an extensive liaison/reporting system capable of keeping all involved agencies informed of progress and status of each individual referred to the program. The vendor must describe a process which will assure that reports of client progress and status are transmitted in a timely manner to appropriate agencies. Awarded Vendors are required to use the DUI electronic tracking system as the main repository of client data. The bidder must describe in detail how discharge information will be transmitted to the pertinent agencies/individuals. In addition, the agency must have computer capability to utilize the electronic DUI tracking system as described below.

### Application Description:

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The DUI Tracking system is a comprehensive case management application to track DMV and Court ordered and referred DUI clients from evaluation through treatment.

**Technical Requirements:**

The web based application runs on Google Chrome and Windows Internet Explorer version 11 and above.

**Security Requirements:**

The DUI Tracking System will require access to the Delaware Criminal Justice Information System (DELJIS). In order to obtain access to DELJIS vendor employees will need to be fingerprinted, complete a background check and work with the Office of Highway Safety to follow the process required by DELJIS to obtain access.

Non State users will be setup using a two-step authentication process which requires using a personal mobile device to obtain a secure passcode for application login.

- Awarded contractor must submit monthly and final reporting requirements provided from DSAMH. These requirements include, but are not limited to: quality improvement processes, number of clients served, and successful referrals. Templates for all reports will be provided by DSAMH at a later time.
- Further financial reporting is required as identified during contract negotiations.

Data Submission

Awarded Contractor submitting electronic data are required to use the state's Secure File Transfer Protocol (SFTP) site. Contractors who are not able to install the SFTP software must submit a request to use other reporting methods. Other reporting methods include encrypted message or hand carried. The request must clearly explain the provider's inability to use the SFTP site. Contact the DSAMH Statistic and Research Unit (SRU) for information on creating an account and any other questions or concerns about data reporting requirements.

Data submission elements will be specified in the scope of work for each contract.

To accomplish this several authorization forms need to be completed and returned to the DSAMH SRU. In addition, SFTP client software is required to be installed on your computer for the file transfer. This software is available free on the Internet.

The following links contain instructions necessary for setting up the software and authorization forms.

1. Secure File Transfer Memorandum of Agreement  
<http://dhss.delaware.gov/dhss/dms/irm/files/sftpmoa01292010.pdf>
2. Secure File Transfer User Procedures  
[http://dhss.delaware.gov/dhss/dms/irm/files/sftpuserprocedures\\_20120611.pdf](http://dhss.delaware.gov/dhss/dms/irm/files/sftpuserprocedures_20120611.pdf)
3. DHSS SFTP Quick Start Guide  
<http://dhss.delaware.gov/dhss/dms/irm/files/sftpquickstartguide06112012.pdf>
4. Biggs Data Center Non-Disclosure Form  
<http://www.dhss.delaware.gov/dhss/dms/files/irmnon-d02072013.pdf>

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5. DTI State Information Transport Network (SITN) Acceptable Use Policy  
<http://dti.delaware.gov/pdfs/pp/AcceptableUsePolicy.pdf>

Contractors requiring access to the SFTP site must identify an organizational point of contact and list all employees who will require site access. The Contractor will maintain the accuracy of the list providing updates to DSAMH as changes occur.

**SERVICE PERIOD**

- Service period is one contract year. Service period will be determined upon contract negotiation year with four (4) optional extensions for a period of one (1) year for each extension. Extensions will be contingent upon the availability of appropriated funds, needs of the Department/Division, and performance of the Contractor.
- The service will be renewable each year at the option of DSAMH.
- Contractor shall submit a Work Plan and costing and pricing data (Budget Workbook) annually to DSAMH before it will exercise an option to extend the contract.

**PERFORMANCE MEASUREMENTS**

- DSAMH has the right to conduct an on-site evaluation and monitoring of the Awarded Contractor(s)' activity at any time.
- Performance determination shall be based on, but not limited to, considerations of the following factors:
  - Administrative Performance Measures: Each selected agency will agree to meet the following expectations:
    - The average duration from referral to program entry for Education or Outpatient Treatment shall not exceed 30 business days.
    - The average duration from program entry to program completion shall not exceed 90 business days.
    - Entry of client discharge status into the DUI Tracking System shall not exceed 10 business days.

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<b>Performance Objective</b>	<b>Performance Standard / Acceptable Quality Level</b>	<b>Performance Goal</b>	<b>Method of Assessment</b>
Provide services as identified in Work Plan	100% of Program/Site Compliance	100% of planned workload	On-site monitoring, review of program reports, third-party feedback
Adhere to requirements in Professional Service Agreement and Divisional Requirements	100% of Organization, Program compliance	100%	On-site monitoring, review of program reports, third-party feedback
Adhere to all required Federal and State regulations	100% of Program/Site compliance	100% of Program/Site	On-site Monitoring, review of program reports and invoices
Deliver required reports	Gather information and submit the requested reports (routine and ad hoc) by the given deadline to DSAMH as established	Gather information and submit the requested reports by the deadline 100% of time	Review of Reports and Deadlines
Adherence to Program Activity Timelines and Program Outcome Measures	90% adherence to activity timelines and program outcome measures	100% adherence	As established by DSAMH



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**Appendix C- Pricing Structure**

This Program is funded solely through client fees.  
The pricing structure is outlined in the Delaware Administrative Code Title 2, Section 1201.  
[Delaware Administrative Code Title 2, Section 1201.](#)

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**Appendix D – DIVISIONAL REQUIREMENTS**

The Divisional Requirements below will be listed as Appendix A of the awarded vendor's contract. Divisional Requirements are updated at the Division's discretion as necessary.

**Division Requirements**

The Contractor certifies, to the best of its knowledge and belief that all services provided under this contract shall be in compliance with all the terms, requirements and provisions of:

**I. General**

- A.** The Contractor agrees to provide the staff and services (as described in Appendices) and to seek reimbursement for services provided according to the terms and conditions set forth in this contract. Delaware residents shall be given priority over residents of other states in determining eligibility for services provided under this contract.
- B.** In the event that Contractor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware may suspend the scheduled payments.
- C.** 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.
- D.** The Contractor agrees to acknowledge, in any communication involving the public, the media, the legislature or others outside of DSAMH, that the services provided under the terms of this contract are funded by and are part of the system of public services offered by DSAMH.
- E.** The Contractor agrees to participate in the DSAMH reporting and identification system and to use such forms as are approved/required by or supplied by DSAMH. Any modifications to the approved forms must have prior authorization from DSAMH.
- F.** DSAMH retains the specific right of access to all treatment records, plans, reviews and essentially similar materials that relate to the services provided to clients/consumers under the terms of this contract. DSAMH shall be entitled to make and retain possession of copies of any treatment records, plans, reviews and essentially similar materials which relate to the services provided to clients/consumers under the terms of this contract and the contractor shall not restrict DSAMH from such possession.
- G.** The Contractor agrees to submit incident reports, PM46 notifications as well as reporting of any and all adverse events.

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- H. The Contractor agrees to maintain such participant record systems as are necessary and required by DSAMH and/or federal mandate to document services. Program record systems shall be compatible with existing DSAMH systems, including the management information system (MIS), be based on project objectives and measure and track the movement of clients through the program.
- I. The Contractor agrees to provide DSAMH copies of such records, statistics and other data required for research, evaluation, client follow-up, training needs assessment and program or financial monitoring or audit.
- J. The Contractor agrees that no employee, board member, or representative of the Contractor, either personally or through an agent, shall solicit the referral of clients to any facility or program in a manner, which offers or implies an offer of rebate to persons referring clients or other fee-splitting inducement. This applies to contents of fee-schedules, billing methods, or personal solicitation. No person or entity involved in the referral of clients may receive payment or other inducement by a facility/program or its representatives. No person shall be employed for the sole reason to direct people with serious mental illness to a facility that they are employed by or get remuneration of any kind.
- K. The Contractor and DSAMH mutually understand and agree that DSAMH may at any time elect to seek another provider to provide the services required by this contract. In the event that DSAMH selects another provider, the Contractor agrees and shall be required to cooperate fully in the development and execution of an orderly and coordinated close-out of the Contractor's program operation to ensure the continuity of appropriate client care during the transition to another service provider.
- L. The Contractor agrees to apportion the delivery of services as purchased under this contract and to assure that services are reasonably available to DSAMH-approved and/or funded consumers/clients throughout the term of the contract. DSAMH reserves the right to delay or withhold payments for services provided under this contract when it appears that services are being provided in a manner that threatens reasonable availability of services or delays the expected provision of client specific data reports on a monthly basis throughout the term of the contract.

**II Department of Health and Social Services Requirements**

- A. The Contractor shall ensure that its liability insurance extends coverage to such members of its governing and/or advisory boards as may be potentially liable for damages by virtue of their official position, service to, or otherwise apparent or presumed relationship to the Contractor and/or the services provided by the Contractor under the terms of this contract.
- B. This entire Contract between the Contractor and the Division is composed of these several pages and the attached:

Appendix A	Divisional Requirements
Appendix B	Scope of Work/Service Description
Appendix C	Financial Requirements (to be created by DSAMH)
Appendix C-1	Contract Budget

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Appendix D	Vendor Work Plan
Appendix E	RFP-HSS-19-051, Driving Under the Influence (DUI) –
Evaluation & Referral Program (DERP)	
Attachment 1	Vendor Response to HSS-19-051

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

C. The Contractor agrees to comply with the following Delaware Health & Social Services Policy Memorandums as applicable (highlighted).

1. **Policy Memorandum #5 – Client Confidentiality**  
<http://www.dhss.delaware.gov/dhss/admin/files/pm5.pdf>
2. **Policy Memorandum #7 – Client Service Waiting Lists**  
<http://www.dhss.delaware.gov/dhss/admin/pm7.html>
3. Policy Memorandum #24 – Safeguarding & Management of Resident/Client funds  
<http://www.dhss.delaware.gov/dhss/admin/files/pm24.pdf>
4. **Policy Memorandum #36 – Standardized Requirements During the Development Phase of Community Based Residential Homes for the DHSS/Division** <http://www.dhss.delaware.gov/dhss/admin/files/pm36.pdf>
5. Policy Memorandum #37 – Standard Ability to Pay Fee Schedule  
<http://www.dhss.delaware.gov/dhss/admin/policy/files/pm37.pdf>
6. Policy Memorandum #40 – Criminal Background Check Policy (applies pending location of vendor) <http://www.dhss.delaware.gov/dhss/admin/files/pm40.pdf>
7. **Policy Memorandum #46 – Standardized Reporting and Investigation of Suspected Abuse, Neglect, Mistreatment, Financial Exploitation and Significant Injury of Residents/Clients Receiving Services in Residential Facilities Operated By Or For DHSS**  
[http://www.dhss.delaware.gov/dhss/admin/files/DHSSPM/pm\\_046-8-22-16.pdf](http://www.dhss.delaware.gov/dhss/admin/files/DHSSPM/pm_046-8-22-16.pdf)
8. Policy Memorandum #55 – Human Subjects Review Board  
<http://www.dhss.delaware.gov/dhss/admin/pm55.html>
9. **Policy Memorandum#66 – Discharge/Transition Practices/Guidelines**  
[http://dhss.delaware.gov/dhss/admin/files/PM\\_66.pdf](http://dhss.delaware.gov/dhss/admin/files/PM_66.pdf)
10. **Policy Memorandum #70 – Inclusion policy**  
[http://dhss.delaware.gov/dhss/admin/files/PM\\_70.pdf](http://dhss.delaware.gov/dhss/admin/files/PM_70.pdf)

D. If the amount of this contract listed Section 2 of the contract boilerplate, paragraph 2.3 is over \$25,000, the Contractor, by their signature, is representing that the Firm and/or its Principals, along with its subcontractors and assignees under this Contract, are not currently subject to either suspension or debarment from Procurement and Non-Procurement activities by the Federal Government.

### III Federal requirements

A. The following Federal Mandates:

1. The Drug-Free Workplace Act of 1988.

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2. The Americans with Disabilities Act (PL 101-336).
3. P.L. 103-227, Sections 1041-1044, 20 U.S.C. Sections 6081-6084, also known as the Pro-Children Act of 1994.
4. Title IX of the Education Amendment of 1972 (45 CFR 86) which provides, in general, that no person shall on the basis of sex be excluded from program participation.

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**HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement ("BAA") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (**Effective Date**), by and between [Vendor Name] (**Business Associate**), and the State of Delaware, Department of [Agency/Division Name] (**Covered Entity**) (collectively, the **Parties**).

**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 either (a) 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"), or (b) health information relating to substance abuse and treatment ("Part 2 PHI") protected under the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC §290dd-2 and 42 CFR Part 2 (collectively, "Part 2"), 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 and Part 2 PHI.

**WHEREAS**, Business Associate provides [professional services] for Covered Entity pursuant to a contract dated \_\_\_\_\_, 201[\_] and such other engagements as shall be entered

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**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**, Business Associate is also a Qualified Service Organization ("QSO") under Part 2 and must agree to certain mandatory provisions regarding the use and disclosure Part 2 PHI;

**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

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(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.



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(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:

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- (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.

(l) **Part 2 QSO Compliance.**

(i) To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits Part 2 PHI, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 regulations; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.

(ii) Notwithstanding any other language in this Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by Part 2 is subject to protections that may prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.

(iii) Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

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**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

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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.

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(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: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Business Associate**

By: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

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**Appendix E- Professional Services Agreement**

The Professional Service Agreement template can be found at the following link: [Professional Services Agreement](#)