



DELAWARE HEALTH  
AND SOCIAL SERVICES

**Division of Management Services**

1901 N. DuPont Highway  
New Castle, DE 19720

REQUEST FOR APPLICATIONS NO. HSS 20-016  
FOR  
REGISTRATION AND OPERATION  
OF MEDICAL MARIJUANA COMPASSION CENTERS  
IN DELAWARE

FOR  
THE DIVISION OF PUBLIC HEALTH  
DELAWARE HEALTH AND SOCIAL SERVICES  
417 FEDERAL STREET  
JESSE COOPER BUILDING  
DOVER, DE 19901

*September 2, 2020*

**- *Deadline to Respond* -**  
***October 28, 2020***  
***11:00 AM (EDT)***

Application Fee      \$5,000 made payable to Division of Public Health Medical Marijuana Program

Performance Bond      Waived

STATE OF DELAWARE  
Delaware Health and Social Services, Division of Public Health

**REQUEST FOR APPLICATION FOR  
THE REGISTRATION AND OPERATION  
OF MEDICAL MARIJUANA COMPASSION CENTERS  
IN DELAWARE  
FOR  
DELAWARE DIVISION OF PUBLIC HEALTH  
HSS 20 016**

**Overview**

In response to the Medical Marijuana Act, Title 16, Chapter 49A, the Department of Health and Social Services intends to select four applicants to provide services in the area of the **Registration and Operation of Medical Marijuana Compassion Centers in Delaware**. The state procurement process has been chosen as the vehicle for securing these services for ease and transparency; however, the establishment and operation of the compassion center will be completely funded by the vendor(s). Registration Certificate renewal every two years is contingent on the legal status of Medical Marijuana, and center performance.

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

Public Notice	Date: September 2, 2020
Deadline for Questions	Date: September 16, 2020
Pre-bid Meeting	None
Response to Questions Posted by:	Date: September 30, 2020
Deadline for Receipt of Applications	Date: October 28, 2020 at 11:00 AM (EDT)
Estimated Notification of Award	Date: November 12, 2020
Estimated Project Begin Date	Date: December 10, 2020

**A. RFA Submissions**

**1. ALL APPLICATIONS MUST BE SUBMITTED ONLINE ON THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES' Eprocurement portal, which is currently found at <https://dhss.bonfirehub.com/>. Responses submitted by hard copy, mail, facsimile, or e-mail will not be accepted.**

**2. Acknowledgement of Understanding of Terms**

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

**3. Proposals**

To be considered, all proposals must be submitted through Bonfire at <https://dhss.bonfirehub.com/> and respond to the items outlined in this RFA. The State reserves the right to reject any non-responsive or non-conforming proposals.

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**Pre-Bid Meeting**

There **will be no pre-bid meeting**. Questions may be submitted no later than **September 16, 2020**. All inquiries must be submitted in the Q/A section of the project listing in the **Bonfire Procurement Portal** (<https://dhss.bonfirehub.com>). The Department's response to questions will be posted, according to the procurement schedule, under the project listing in Bonfire and to the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov/> by September 30, 2020.

**Obtaining Copies of the RFA**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) and **through Bonfire at** <https://dhss.bonfirehub.com>. Paper copies of this RFP will not be available.

**Public Notice**

Although this registration of a compassion center is not subject to State of Delaware procurement requirements set forth in Chapter 69 of Title 29, public notice has been provided in accordance with 29 *Del. C.* § 6981.

**NOTIFICATION TO APPLICANTS**

An applicant shall list all contracts awarded to it or its predecessor firm(s) by the State of Delaware during the last five years, including State Agency, Division, Contact Person (with address/phone number), period of performance and amount. The Evaluation/Selection Review Committee will consider these additional references and may contact each of these sources. Information regarding applicant performance gathered from these sources may be included in the Committee's deliberations and factored in the final scoring of the application. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the application.

FOR FURTHER BIDDING INFORMATION PLEASE CONTACT:

MEDICAL MARIJUANA PROGRAM  
DIVISION OF PUBLIC HEALTH  
JESSE COOPER BUILDING, SUITE 140  
417 FEDERAL ST.  
DOVER, DE 19901  
[PAUL.HYLAND@DELAWARE.GOV](mailto:PAUL.HYLAND@DELAWARE.GOV)

**ATTENTION APPLICANTS: Your application must include a cover letter and the forms in Appendices C, D, and E signed and all information on the forms must be complete. Applications will be 50 pages or less.**

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The issuance of this Request for Applications (RFA) does not commit the Delaware Department of Health and Social Services, Division of Public Health, to award a certificate, to pay any costs incurred in the preparation of an application or subsequent negotiations, or to pay for any costs associated with the implementation and operation of the proposed services. The Division reserves the right to reject or accept any or all applications or portion thereof, to cancel in part or in its entirety this Request for Applications, or to delay implementation of any agreement, which may result, as may be necessary to meet the Department's funding limitations and processing constraints. Unless otherwise specified, all terms in this RFA will have the meaning ascribed to them pursuant to 16 Del. C. Ch. 49A and 16 Del. Admin. C. Ch. 4470.

**Organizations Ineligible to Apply:**

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

**Restrictions on Communications with State Staff**

From the issue date of this RFA until all vendors are selected and the selection is announced, Applicants are NOT allowed to contact any Division of Public Health staff, except those specified in this RFA, regarding this process. Contact between vendors and Paul Hyland is restricted to emailed or faxed questions concerning this request for application. Questions must be submitted in writing and will be addressed in writing.

Questions are due by **September 16, 2020**. The complete list of questions and their answers will be posted on the internet at <http://bids.delaware.gov> and **through Bonfire at** <https://dhss.bonfirehub.com>.

**Contact with State Employees**

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact(s) regarding this RFA is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their application 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. In the case of such exception, communication may not include an active RFA.

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**I. INTRODUCTION**

**A. BACKGROUND**

The mission of the Division of Public Health (DPH) is to protect and enhance the health of the people of Delaware. The Division accomplishes its mission by:

- Working together with others;
- Addressing issues that affect the health of Delawareans;
- Keeping track of the State's health;
- Promoting positive lifestyles;
- Responding to critical health issues and disasters; and
- Promoting the availability of health services.

The accomplishment of this mission will facilitate the Division in realizing its vision of creating an environment in which people in Delaware can reach their full potential for a healthy life.

With the passing of The Delaware Medical Marijuana Act (hereafter referred to as "the Act"), Title 16, Chapter 49A, which took effect on July 1, 2011, Delaware joined the list of now 33 states that removed state-level criminal penalties from the medical use of marijuana for the health and welfare of its citizens. The purpose of the law is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

The first Compassion Center opened in June 2015 in Wilmington area of New Castle County (NCC).

A subsequent application request yielded vendor for locations in Lewes, Delaware (Sussex County), Smyrna, Delaware (Kent County) and Newark, Delaware (NCC).

This request for applications is designed to create greater access to qualified patients in underserved areas of the State.

The purpose of the Medical Marijuana Program (MMP) is to regulate the medical use of marijuana in Delaware and to minimize the risk of theft and diversion of marijuana to unregistered individuals. A critical aspect of that mission is to control the amount of inventory in the State. According to the Marijuana Policy Group in 2017, the State of Colorado held 32.6 metric tons of unsold marijuana due to over production. A closer look at the supply and demand numbers from Colorado shows growers produced 340.7 metric tons of marijuana. Regulated Sales receipts to Colorado residents and tourists were 208.7 metric tons, leaving 99.4 metric tons of marijuana unaccounted for and potentially introduced to the illicit market.

Delaware will control the diversion of marijuana products through aggressive monitoring of inventory and limiting inventory balances to align with patient demand.

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Any vendor who wishes to be considered as an owner and operator of a center should submit their application to the Department before the 11:00 a.m. deadline on **October 28, 2020**, in response to this REQUEST FOR APPLICATION (RFA). After the selection of a qualified applicant, or applicants, the Department will issue a registration certificate to the winning vendor(s) on or before December 10, 2020. After the Office of Medical Marijuana (OMM) has inspected the facilities, a permit to operate will be issued allowing the selected vendor(s) to begin growing and selling medical marijuana products. This effort will allow current and future registered patients in Delaware to buy medical marijuana products throughout the State.

The successful applicant must comply with all applicable federal and state laws and regulations, including but not limited to around-the-clock video monitoring, financial accounting controls, random inspections, and a requirement of center employees to verify that patients are registered with the Department before selling them marijuana. Compassion centers should consider innovative ways to meet the stated requirements while increasing access points to patients. The compassion center will only be allowed to cultivate as many marijuana plants necessary to satisfy the patient demand and maintain inventory levels dictated by the regulations.

**B. PROGRAM GOALS**

The goals related to establishing a compassion center in Delaware are consistent with the Act and the Regulations. The primary goal of the program is assuring the safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana to registered patients. Further, it is the goal of the OMM to protect the public by preventing diversion of marijuana to individuals who are not qualified and registered with the Delaware MMP.

Applicants selected through this RFA must comply with all applicable state and federal laws and regulations. Applicants are responsible for awareness of, and compliance with, all federal and state requirements, including but not limited to the following:

- Improve and maintain their organization's knowledge of, and compliance with, the guidelines and policies established in the Act, the Regulations, the Health Information Portability and Accountability Act (HIPAA) and the policies and procedures established by the OMM;
- Improve and maintain their organization's knowledge of the medical marijuana industry, including but not limited to a reasonable understanding of current and new strains of marijuana used to treat various debilitating conditions, current and new methods of delivering marijuana to the body, and current or new methods and standards related to testing marijuana for contaminants and potency of active ingredients;
- Work to improve their organization's delivery of education to registered patients and their caregivers that use their compassion center. This education should include, but is not limited to, knowledge of the state and federal laws related to marijuana use and an understanding of the options available to the patient regarding specific marijuana strains, products and delivery methods;
- Work to increase the availability of affordable medical-grade marijuana to registered, qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance;
- Continually evaluate and improve, as needed, security measures of the compassion center premises and its operations to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana to minimize the risk of diversion of marijuana to unregistered individuals;
- Maintain financial management and accurate recordkeeping of their organization. Allow for efficient and thorough audits by the Department;

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- Promote and comply with State Legislative Mandates, Program Priorities and Key Issues as listed in the following:

1. State Law Requirements

16 Del. C. Ch. 49A sets out the legislative requirements to operate a compassion center. The registered compassion center business model proposed by an applicant must include the administrative, fiscal, inventory control, cultivation, harvesting, packaging, labeling and dispensing operations or signed detailed agreements for product acquisition, necessary to ensure adherence to these requirements. These legal obligations include, but are not limited to the following:

- a. The registered compassion center shall be operated on a not-for-profit basis. The organization need not be recognized as tax-exempt by the Internal Revenue Service and is not required to incorporate in response to Title 8 of Delaware Code.
- b. A physician may not refer patients to a registered compassion center or registered designated caregiver, advertise in a registered compassion center, or, if the physician issues written certifications, hold any financial interest in a registered compassion center.
- c. The registered compassion center may not purchase usable marijuana or mature marijuana plants from any person other than another registered compassion center in the State of Delaware.
- d. The registered compassion center may not advertise medical marijuana sales in print, broadcast, or by paid in-person solicitation of customers. Appropriate signs on the property of the compassion center, listings in business directories including phone books, listings in trade or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events will be permitted.
- e. The registered compassion center is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, or dispensing marijuana for any purpose except to assist registered Delaware patients, with the medical use of marijuana directly or through the qualifying patients' designated caregivers.

2. Program Priorities

- a. Increase patient access to medical grade marijuana that has been thoroughly tested for contaminants and potency.
- b. Promote a diversity of vendors in the Delaware MMP to move toward giving an equitable stake to communities disproportionately affected by past enforcement policies.
- c. Assuring the safe cultivation and dispensing of quality, medical grade marijuana to authorized MMP cardholders in a form that is appropriate and effective for the patient and delivers the level of active ingredient needed to treat the patient's medical condition effectively. This includes making available specific strains of marijuana, and various delivery methods, believed by industry experts to be effective in treating the debilitating medical conditions recognized by the MMP.
- d. Assuring public health and safety by minimizing to all extents possible risks of marijuana theft or diversion of marijuana outside of the state-regulated system or to individuals who are not authorized MMP cardholders.

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- e. Prevent the oversupply of medical marijuana through monitoring of packaged marijuana inventories, harvested marijuana being processed, bulk inventories and projected yields from unharvested or proposed grows.
- f. Addressing Federal Justice Department concerns by developing and implementing strong, effective measures that will:
  - Deter the distribution of marijuana to unqualified minors, prohibit marijuana in areas that are associated with minors; and prohibit marketing of marijuana to minors;
  - Deter revenue from the sale of marijuana from being diverted to criminal enterprises, gangs and cartels;
  - Prevent diversion of marijuana outside of the state-regulated system and to other states;
  - Prevent state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
  - Prevent violence and harassment in the cultivation and distribution of marijuana;
  - Prevent drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
  - Prevent the cultivation of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
  - Prevent marijuana possession or use on federal or state property.

3. Key Issues

In addition to the Program Priorities, the following key issues have implications for the compassion center's continued registration with the program, and should be considered in developing the application:

- a. Efficiency and effectiveness in management and operations of the compassion center, including accessibility by the Department for audits and site inspections;
- b. Management and decision-making through performance measures and accountability for outcomes;
- c. Linkages and partnerships with research organizations focusing on increasing the effectiveness of marijuana used to treat debilitating medical conditions and decreasing risks and side effects associated with the drug;
- d. Support of disadvantaged populations including hiring practices, workforce diversity, and positive community impacts;
- e. Incorporation of research outcomes that focus on the medical use of marijuana to treat specific debilitating medical conditions; and
- f. Data collection for use in monitoring specific cannabinoid performance in treating specific debilitating medical conditions and using the outcomes to improve services to registered patients.

## II. DEFINITIONS

Please see 16 *Del. C.* § 4902A and 16 *Del. Admin. C.* § 4470 for program-specific definitions.

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### III. SCOPE OF SERVICES

All components listed in this section are mandatory.

This section describes the responsibilities of the selected applicant registered with the Department to open and operate a compassion center in Delaware. Tasks are associated with a deliverable when appropriate. The Department reserves the right to negotiate the requirements with the selected applicant relative to monitoring tasks listed below. In addition to, and consistent with, the responsibilities described in this section the selected applicant shall be required to comply with requirements for the operation of a compassion center as set forth in 16 *Del. C.* § 4902A and 16 *Del. Admin. C.* § 4470.

Compassion centers may only operate if they have been issued a valid registration certificate from the Department. The organization awarded the agreement for the compassion center will perform the following:

#### A. ESTABLISH AND MAINTAIN A MEDICAL MARIJUANA COMPASSION CENTER

This RFA will select four applicant(s) to operate additional registered compassion centers. This RFA is specifically issued to increase access for medical marijuana patients in underserved areas of the State based on patient population data. Retail locations will be selected to support underserved areas in the State. The Department may choose any combination of vertically integrated compassion centers or may choose retail only applicants with an agreement for obtaining medical marijuana products from a current Delaware licensed compassion center. Each retail location is registered separately.

A registered compassion center is a not-for-profit entity registered with the MMP that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, or dispenses marijuana, paraphernalia, or related supplies and educational materials to registered qualifying patients and the registered designated caregivers of these patients.

Selected vendor(s) will need to address items such as training and inventory, as appropriate for the scale of the facility and allowed total quantity of marijuana.

##### 1. Bylaws Establishment and Maintenance

The compassion center shall, as part of its initial application, provide to the Department a current copy of its bylaws, and shall maintain such bylaws in accordance with the Act and the Regulations.

The bylaws shall include, at a minimum:

- a. The ownership structure of the registered compassion center;
- b. The composition of the board of directors;
- c. Procedures for the oversight of the registered compassion center;
- d. Procedures to ensure accurate record keeping and security measures;
- e. A description of the facility where medical marijuana will be grown or prepared for distribution by the registered compassion center; and
- f. Such provisions relative to the disposition of revenues to establish and maintain the not-for-profit character of the registered compassion center.

##### 2. Physical Location of Compassion Center

The physical location of the registered compassion center shall be selected in compliance with these legislative mandates:

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- a. All cultivation of marijuana for registered compassion centers must take place in an enclosed, locked location at the physical address or addresses provided to the MMP during the registration process, which can only be accessed by MMP-registered compassion center agents working or volunteering for the registered compassion center;
- b. The registered compassion center may not be located within 500 feet of the property line of a preexisting public or private school; and
- c. The registered compassion center may not share office space with, nor refer patients to, a physician.

3. Security and Safety Measures

The registered compassion center shall implement appropriate security and safety measures, as determined by the Department, to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana. Such measures shall include the following minimum requirements:

a. Exterior of compassion center premises:

- Access from outside the premises shall be kept to a minimum and be well controlled;
- The outside perimeter of the premises shall be well-lit;
- Entry into any area(s) where marijuana is held shall be limited to authorized personnel; and
- Marijuana production, packaging, labeling, or distribution shall not be visible from the street or other public area.

b. Alarm System:

The registered compassion center shall have a fully operational security alarm system at each authorized physical address that will provide suitable protection against theft and diversion. The system shall include, at a minimum:

- Immediate automatic or electronic notification to alert local or municipal law enforcement agencies to an unauthorized breach of security at the registered compassion center or at any other authorized physical address;
- Immediate automatic or electronic notification to alert local or municipal public safety personnel of a loss of electrical support backup system; and
- When appropriate, the security system shall provide protections against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

c. Video Surveillance

The registered compassion center shall provide an appropriate video surveillance system that includes the following areas and access to recorded surveillance:

- Video surveillance should record access areas, customer service areas, growing areas, and anywhere the marijuana is handled, to include processing and packaging areas;
- Video footage will be digitally recorded; and
- The compassion center shall provide the Department with access to the video footage (live and recorded) 24-hours a day, seven days a week through a secure internet connection.

d. Inventory Controls

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- Total Allowed Quantity:

The registered compassion center shall grow only the amount of plants necessary to meet current demand levels.

- Bar Coding Inventory:

The registered compassion center shall employ a bar coding inventory control system to track batch, strain and amounts of marijuana from each plant to include patients' card registration numbers to whom it was dispensed, dates of harvest, storage, and packaging of usable product. All harvested usable marijuana should be traceable to a specific plant. The compassion center shall be accountable for marijuana produced by each of its plants and the end result of that production (distributed to specific patient, stored in retail area, used for testing, destroyed, etc.).

Registered compassion centers will use an appropriate seed to sale tracking software that operates seamlessly with the State's consolidated system, BioTrack THC.

- Storage of Marijuana

The registered compassion center shall ensure that usable marijuana is stored in a locked area with adequate security. At a minimum, security should be assessed, established and maintained based on:

- (i) The quantity of usable marijuana that will be kept on hand at each authorized location;
- (ii) The registered compassion center's inventory system for tracking and dispensing usable marijuana;
- (iii) The geographic location of the registered compassion center; and
- (iv) The scope and sustainability of the security system.

#### 4. Financial Requirements

As the registered compassion center must be wholly owned and operated by the selected vendor(s), the vendor(s) will be required to demonstrate availability of sufficient capital to initiate and maintain operations of the compassion center. Sources of funding must be identified as described in the records section of this RFA.

a. List of expenses for vendor(s)

All expenses related to establishing the registered compassion center and maintaining its services are that of the selected vendor(s), including, but not limited to:

- The cost of preparing the application in response to this RFA, including the \$5,000 non-refundable application fee;
- Initial certification and bi-annual fee of \$40,000;
- The costs related to obtaining MMP registry cards for all agents associated with the compassion center, now or in the future, including annual registry card application fees of \$125 per agent and the cost of state and multi-jurisdictional criminal background checks for all agents every five years;
- The costs related to establishing an Information Technology system for tracking records and receiving patient and caregiver data from the Department. All costs associated with the connection to the State system will be the selected vendor's responsibility;

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- The costs of operations and maintenance in all approved locations or addresses, including establishing and maintaining security measures.

b. Financial Operating Principles

A registered compassion center shall:

- Operate on a not-for-profit basis and shall provide an affidavit signed by all Board members that the corporation is being operated, and will continue to operate, on a not for profit basis and provide a yearly accounting statement demonstrating that the corporation is functioning as a not-for-profit. Such documentation shall be available for inspection by the Department upon request;
- Keep detailed financial reports of proceeds and expenses;
- Maintain all inventory, sales and financial records in accordance with general accepted accounting principles (“GAAP”); and
- Create and maintain a plan for making medical marijuana available on an affordable basis to registered qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance.

5. Data Verification System

The selected vendor(s) shall develop and host a secure computer interface to receive patient and caregiver card data from the Department. The system shall be used to verify cardholder’s status prior to dispensing marijuana for a registered patient.

6. Documentation and Records Maintenance and Retention

All electronic and paper records and documentation shall be maintained in compliance with the Act, the Regulations, and all applicable federal, state laws and regulations. All records and books, including financial and inventory operations, will always be kept in an auditable format for review during inspections and audits initiated by the Department.

These records include:

a. Dispensing Marijuana

Records of dispensed marijuana, which may be traced according to patient MMP registry identification numbers to protect confidentiality and compassion center’s security protocols, shall be maintained. Compliance with the patient possession limit of no more than three ounces dispensed every fourteen-day period and in possession of no more than six ounces at any given time shall be enforced by maintaining records that include at least the following information:

- How much marijuana is being dispensed to the registered qualifying patient for each transaction;
- Whether it was dispensed directly to the registered qualifying patient or to the designated caregiver;
- The date and time the marijuana was dispensed; and
- The barcode tracking number of the marijuana being dispensed that is traceable to a specific compassion center harvested plant.

b. Inventory accountability records

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Documentation of all inventory audits and reviews shall include at least the following data:

- Date the inventory audit or review was conducted;  
Summary of the inventory findings including the name, signature and title of individual who conducted the inventory.

c. Product testing results

All tests of medical marijuana samples, ensuring freedom from contaminants and determining the potency of the cannabinoids in the various marijuana strains, shall be recorded and maintained. These records should include at least:

- The batch number of marijuana being tested;
- The amount of marijuana being tested;
- The results of the test.

d. Facility inspections

Records of all maintenance inspections and tests conducted, results of inspections and tests, and resulting corrective action taken shall be maintained and include, as a minimum, the following items:

- The date of the action;
- Summary of the action(s) performed; and
- Name, signature, and title of person who performed the action.

e. Tracking logs of transporting marijuana

Tracking logs will be maintained for the transportation of marijuana on behalf of the compassion center. A document will accompany a registered compassion center agent when transporting marijuana on behalf of the registered compassion center. This document shall contain at least the following:

- The amount of marijuana being transported;
- The date the marijuana is being transported;
- The barcodes tracking the transported marijuana to the compassion center inventory control system;
- The registry identification number of the registered compassion center and a contact telephone number to verify that the marijuana is being transported on behalf of the registered compassion center;
- The registry identification number of the registered compassion center agent that is transporting the marijuana; and
- The reason for the transportation of the marijuana.

f. Security inspections

Records of inspections and reviews of security devices, including video monitoring, results of inspections and reviews, and any corrective action taken shall be maintained. This shall include any servicing, upgrades or modification to the security system or

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devices. Records of all such inspections and actions shall include, as a minimum, the following items:

- The date of the action;
- Summary of the action(s) performed; and
- Name, signature, and title of person who performed the action.

g. Alarm activations or breaches of security

Any alarm activation or other event that requires response by public safety personnel shall be recorded. This requirement includes unauthorized breaches of security, even if an alarm activation did not occur. The record will include at a minimum:

- The event;
- The action taken in response to the event;
- any changes to the physical nature of the compassion center (e.g. security upgrades, replacements, etc.); and
- Any changes to the operating procedures as a result of the event.

h. All video footage of the facility, inside and out, will be digitally recorded and retained as directed by the Department.

i. Agent/personnel records

A record shall be made and maintained for any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board of that was fined or had a registration or license suspended or revoked in any administrative or judicial proceeding.

The compassion center shall maintain at least the following records related to all agents of the compassion center. A personnel record shall be maintained for a period of at least six months after termination of the individual's affiliation with the compassion center. The record should include at a minimum:

- An application for employment or to volunteer;
- A record of any disciplinary action taken; and
- Documentation of all required training. Documentation shall include a signed statement from the individual indicating the date, time and place of said training and topics discussed, including the name and title of presenter(s).

j. Financial records and audits for accountability

A record of the source of any funds that will be used to open or maintain the compassion center, including the name, address, and date of birth of any investor contributing more than \$5,000, shall be recorded and maintained.

**B. PROVISION OF MEDICAL MARIJUANA RELATED SERVICES**

The selected vendor(s) will be required to provide safe access to medical grade marijuana for patients and their selected caregivers who possess an active MMP registry card.

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The vendor(s) will also be required to provide education about the use of medical grade marijuana and related paraphernalia to registered patients, with the patient's debilitating medical condition in mind. These services will be provided in accordance with the Act, the Regulations, HIPAA, the policies and procedures established by the OMM, requirements stipulated in this RFA and the agreement negotiated and agreed upon with the selected vendor(s).

1. Dispensing Marijuana

A compassion center shall not acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply or dispense marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the qualifying patient's registered designated caregiver.

a. Patient Verification

Before marijuana may be dispensed to a designated caregiver or a registered qualifying patient, a compassion center agent must determine that the individual is a current cardholder in the verification system and must verify each of the following:

- That the registry identification card presented to the registered compassion center is valid and active;
- That the person presenting the card is the person identified on the registry identification card presented to the compassion center agent; and
- A registered compassion center shall not dispense more than three ounces of marijuana to a registered qualifying patient, directly or via a designated caregiver, in a fourteen-day period. Further, a compassion center agent may not knowingly dispense marijuana to a registered patient, or a patient's caregiver, in an amount that will exceed the patient possession limit of six ounces at any given time.

b. Packaging and Labeling

All usable marijuana dispensed to registered patients and caregivers shall be issued in a sealed, tamperproof and labeled container clearly identified as having been issued by the registered compassion center. The label shall at least indicate the following:

- The name of the registered compassion center;
- The name of the patient, or the patient registry card number, for whom the marijuana is being dispensed;
- The name of the marijuana strain;
- A batch identified by number or barcode and traceable through inventory controls;
- The quantity of marijuana being dispensed;
- The statement "this product is for medical use only, not for resale;"
- A statement that the medical marijuana is free of contaminants; and
- Details indicating the levels of active ingredients in the marijuana, as confirmed by testing.
- Labeling shall include recommendations for use including daytime or nighttime use.

Written instructions that the marijuana shall always remain in this container except while being consumed or prepared for consumption should be issued with the dispensed marijuana.

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c. Adequate supply of drug and paraphernalia

The vendor(s) shall demonstrate a plan in the application to provide an adequate supply of medical marijuana to the registered patients in the state.

2. Operation Procedures Manual

The registered compassion center shall develop, implement and maintain on the premises a current, correct, and true operations manual, which addresses, as a minimum, the requirements outlined in this RFA, the Act and the Regulations. The operations manual shall be available for review by the Department upon request.

The operations manual shall include at a minimum, the following:

- a. Procedures for the oversight of the registered compassion center including, but not limited to, documentation of the reporting and management structure of the registered compassion center;
- b. Procedures for safely dispensing medical marijuana to registered qualifying patients or their registered caregiver;
- c. Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;
- d. Employee security policies;
- e. Safety and security procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies;
- f. Personal safety and crime prevention techniques and procedures;
- g. An employment contract for employees or a volunteer agreement for all volunteers;
- h. The registered compassion center's alcohol and drug free workplace policy;
- i. A description of the registered compassion center's outreach activities to registered qualifying patients or their registered caregiver, as defined in this Scope of Services;
- j. A description of the marijuana packaging from the compassion center;
- k. A description and example of the document that will accompany a registered compassion center agent when transporting marijuana on behalf of the registered compassion center;
- l. Detailed procedures of the methodology proposed to grow, cultivate, harvest, and prepare the marijuana for use by the registered patients. The use of pesticides is prohibited in the cultivation of marijuana per 16 *Del. Admin. C.* § 4470, 7.1.1.4, so this section should explain how to prevent and treat insect infestations, molds, or fungus commonly found in marijuana production.

3. Outreach Services

The registered compassion center shall have a plan for educating the registered patients and registered caregivers about the medical use of marijuana. The plan should include a description of how the information will be dispersed to the patients. This plan should include, but is not limited to, the following:

- a. Providing each new registered patient who visits the registered compassion center with written Frequently Asked Questions, that explain the limitations on the right to use medical marijuana under state law;
- b. Information regarding state and federal laws related to marijuana use, including the laws related to transportation of the drug across state lines (e.g. taking it on vacation, etc.);

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- c. Education on ingesting options of usable marijuana that are available from the registered compassion center, as well as availability of required paraphernalia needed to make use of those options;
- d. Education on safe dosing;
- e. Education on the potential side effects of using medical marijuana.

**C. STAFFING AND TRAINING**

1. Staffing

a. Eligibility

A person is eligible to work with the registered compassion center organization as a principal officer, board member, employee, volunteer, or other agent if they are at least 21 years old, have not been convicted of an excluded felony offense or a drug misdemeanor within five years of the date of application submission.

b. Records

The registered compassion center shall maintain records according to the requirements in the Act, the Regulations, and this Scope of Services for the following items, as detailed in the Documentation section of this RFA:

- A personnel record for each agent, including any criminal activity or administrative reprimands;
- Manifests, transfers or sales;
- Security system checks; and
- Source of funds for the compassion center.

c. Background Checks

All agents of the registered compassion center, including principal officers, board members, employees and volunteers shall consent to a complete criminal history screening background check to demonstrate compliance with the eligibility requirements. This criminal background check will be conducted prior to any work done on behalf of the registered compassion center and shall include:

- A State Bureau of Identification (SBI) criminal history screening check; and
- A Full nationwide criminal history screening check.
- All applicable fees associated with the required criminal history screening background checks shall be paid by the registered compassion center or the applicant.
- Background check reports will be sent directly to OMM from SBI.

d. Registry Identification Cards

All agents of the registered compassion center, including principal officers, board members, employees and volunteers, shall be issued a registry identification card by the OMM prior to any work done on behalf of the registered compassion center. OMM will

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issue an agent registration card within 30 days of receipt of a complete agent application, including background check reports.

Registry identification cards shall expire one year after issuance or at the expiration of the registered compassion center's permit to operate, whichever comes first. Agent card renewal may be granted if eligibility is maintained by the agent and the registered compassion center.

Agent registry card applications, provided by OMM, shall be submitted for each agent to OMM for review and approval. Contents of the application, which will be appended to the agreement for the selected vendor(s), will include:

- A written and signed statement from an officer or executive staff member of the registered compassion center stating that the applicant is associated with the registered compassion center and in what capacity;
- The name, Delaware address, and telephone number of the applicant;
- The name, address and telephone number of the registered compassion center with which the agent will be associated;
- The applicant's signature and date; and
- Applicant attestation statements indicating the applicant's compliance with the rules of the program, including not diverting marijuana or knowingly over dispensing marijuana.

The following items will be submitted with the application:

- A reasonable xerographic copy of the applicant's Delaware Driver's license or comparable State of Delaware or Federal issued photo identification card verifying Delaware residence. Identification card must be available for inspection/verification at time of MMP card issuance;
- A non-refundable, non-returnable application or renewal fee of \$125;
- State of Delaware background criminal screening check results available through the State Bureau of Identification (SBI); and
- Federal background criminal screening check results available through the SBI.

## 2. Training

The registered compassion center shall develop, implement and maintain an on-site training curriculum, or enter contractual relationships with outside resources capable of meeting employee, agent and volunteer training needs. Each employee, agent or volunteer, at the time of initial appointment, shall receive, as a minimum, training in the following:

- a. Professional conduct, ethics, and state and federal laws regarding patient confidentiality;
- b. Information developments in the field of medical use of marijuana;
- c. The proper use of security measures and controls that have been adopted;
- d. Specific procedural instructions for responding to an emergency, including robbery or violent incident; and
- e. A complete understanding of the State and Federal laws regarding the distribution and use of marijuana.

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**D. QUALITY ASSURANCE PROCEDURES, TESTING AND MONITORING OF OPERATIONS**

1. Quality assurance procedures

The selected vendor(s) will develop monitoring procedures to ensure that services are rendered to patients according to the Act, the Regulations, and the OMM policies and guidelines.

2. Product Testing Procedures

The registered compassion center shall have a detailed procedure regarding quality of marijuana produced for medical use to confirm it is free of contaminants and to determine the potency of all active ingredients or cannabinoids. The procedure shall contain a description of how the marijuana will be randomly sampled including:

- a. When the marijuana will be sampled;
- b. What type of container the bulk marijuana will be stored;
- c. How results are tracked; and
- d. Where the State Investigators will supervise sample selection.

3. Monitoring of Operations

The vendor(s) will also develop monitoring procedures to insure the safe and secure cultivation of medical marijuana and the production and packaging of retail products. This should include security system monitoring.

The following inspections shall be included in the monitoring procedures:

- a. The registered compassion center shall conduct a maintenance inspection or test of the alarm system for each authorized location at intervals not to exceed 30 days from the previous inspection or test;
- b. All necessary repairs to ensure the proper operation of the alarm system shall be made promptly; and
- c. If a failure of the security system is due to loss of electrical support or mechanical malfunction that is expected to exceed an 8-hour period, a registered compassion center shall:
  - Notify the Department by telephone within 24-hours of the discovery of the event; and
  - Provide alternative security measures approved by the Department or close the authorized physical address(es) impacted by the failure/malfunction until the security system has been restored to full operation.

d. Comprehensive and Monthly Inventories

A registered compassion center shall notify the Department and local law enforcement within 24 hours any time there is a suspected loss of marijuana and shall cooperate fully with any investigation into the suspected loss.

The registered compassion center shall conduct an initial comprehensive inventory audit of all medical marijuana, including usable marijuana available for dispensing, mature marijuana plants and unusable marijuana, at each authorized location on the date the registered compassion center first dispenses medical marijuana.

Additional comprehensive inventory audits shall be conducted at regular intervals not to exceed 24 months from the date of the previous comprehensive inventory audit.

Each month, the registered compassion center shall conduct an inventory review of stored, usable marijuana. If a discrepancy is identified during this process, the

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Department and appropriate local law enforcement authorities will be notified of the discrepancy within 24 hours of the discovery of the event.

**4. Inspections by the Department**

Registered compassion centers are subject to random inspection by the Department, with or without notice. The registered compassion center must participate and cooperate with all site review activities conducted by the Department. During an inspection, the Department may review the registered compassion center's confidential records, including its financial and dispensing records. The Department may request review of patient records, financial records, administrative materials and policies, outreach and educational materials and activities, cultivation and packaging operations, and the retail area of the registered compassion center. Inventory and sales information will be available to the Department through a remote, secure internet connection.

Inspections will be completed in order to ensure the compliance of the facility with the Act, the Regulations, this RFA, any Registration certificate issued by the Department to the registered compassion center, and the agreement. The Department will inspect the facility of the registered compassion center, including any offsite growing facilities, for the presence of pesticides, which are prohibited from use in the registered compassion center, as well as fungus and molds. The registered compassion center will be invoiced for the cost of random sampling testing ordered by the Department and responsible for the payment of any costs incurred by the Department related to such random sampling.

**E. OTHER ITEMS TO CONSIDER**

**1. Confidential and Voluntary Nature of Services**

Patients and caregivers served in the registered compassion center accept guidance and education from knowledgeable center agents and purchase marijuana on a voluntary basis. Patient confidentiality must be maintained. Patient and confidential policies found in federal and state law will govern the privacy and security of patient treatment and information.

**2. Culturally Competent Service Delivery**

Outreach and retail services provided by the vendor(s) selected pursuant to this RFA must be delivered with cultural competency in terms of language, race, ethnicity, as well as any demographic variable whose consideration would improve and enhance the effectiveness of the services.

**3. Items of Extra Consideration**

The Department shall consider the accessibility of the services of the registered compassion center to registered patients in the area served by the specific application. This would include the following items:

- a. Physical location of the registered compassion center;
- b. Adequate available parking for patients and caregivers, including safe access for handicapped patients;
- c. Hours the center is open to the patients and caregivers; and
- d. Potential for delivery services for patients that are not able to get to the center.

#### IV. SPECIAL TERMS AND CONDITIONS

##### A. SUBCONTRACTORS

The use of subcontractors will be permitted for administrative bookkeeping or professional service functions as specified below. If a subcontractor is going to be used, this needs to be specified in the application, with an identification of the proposed subcontractor, the service(s) to be provided, and its qualifications to provide such service(s).

Subcontractors will be held to the same requirements as the primary vendor(s). The agreement with the primary vendor(s) will bind sub- or co-vendors to the primary vendor(s) by the terms, specifications, and standards of the RFA. All such terms, specifications, and standards shall preserve and protect the rights of the agency under the RFA and any subsequent Applications and agreements with respect to the services performed by the sub- or co-vendor(s), so that the sub- or co-vendor(s) will not prejudice such rights. The proposed subcontractors must be approved by the Division of Public Health.

Subcontracting payroll or other administrative functions is acceptable; however, access to the accounting books by the Department will not be hindered. No subcontractors will be allowed in any functions directly related to the marijuana handling, such as cultivating, growing, harvesting, packaging, labeling and dispensing except as allowed by the Department.

##### B. FUNDING DISCLAIMER CLAUSE

Delaware Health and Social Services reserves the right to reject or accept any application or portion thereof, as may be necessary to meet this RFA's financial requirements and the Department's processing constraints.

##### C. RESERVED RIGHTS

Notwithstanding anything to the contrary, the Department reserves the right to:

- Reject any and all Applications received in response to this RFA;
- Waive or seek clarification on any information, irregularities, or inconsistencies in Applications received;
- Negotiate as to any aspect of the application with the vendor(s) and negotiate with more than one vendor(s) at a time; or
- If negotiations fail to result in an agreement within two (2) weeks, the Department may terminate negotiations and select the next most responsive vendor(s), prepare and release a new RFA, or take such other action as the Department may deem appropriate.

##### D. EXPIRATION, RENEWAL, SUSPENSION AND TERMINATION CONDITIONS

###### 1. Expiration

A registered compassion center's registration certificate shall expire two years after issuance. The compassion center may submit a renewal application at any time beginning 90 days prior to the expiration of its registration certificate. Such renewal application must be submitted a minimum of 30 days prior to the expiration of its registration certificate to avoid suspension of the certificate. The renewal application will be available from the OMM at the time of renewal.

###### 2. Renewal

The Department shall grant a registered compassion center's renewal application within 30 days of its submission if the following conditions are all satisfied:

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- a. The registered compassion center submits materials required by the Regulations, including a \$40,000 fee, which shall be refunded if the renewal application is rejected;
- b. The Department has not ever suspended the registered compassion center's registration for violations of the Act or the Regulations;
- c. Inspections conducted in response to the Act and the Regulations do not raise any serious concerns about the continued operation of the registered compassion center applying for renewal; and
- d. The applicant continues to meet all the requirements for the operation of a registered compassion center as set forth in the Act and the Regulations.

**3. Suspension**

The Department will suspend a registration certificate authorizing the operation of a registered compassion center, with or without notice, for any violation of an application law or regulation, or if a complete renewal application is not received before expiration of the current one. A registered compassion center may continue to cultivate and possess marijuana plants during a suspension, but it may not dispense, transfer, or sell marijuana per § 4919A (p) of the Act.

**4. Termination**

Before obtaining a registration certificate, the Department will require the vendor(s) to sign an agreement. The Department may terminate any agreement resulting from this RFA at any time that the vendor fails to carry out its provisions or to make substantial progress under the terms specified in this RFA and the resulting application.

Prior to taking the appropriate action as described in the agreement, the Department will provide the vendor(s) with thirty (30) days' notice of conditions endangering performance. If after such notice the vendor(s) fails to remedy the conditions contained in the notice, the Department shall issue the vendor(s) an order to stop production and distribution of marijuana immediately and dispose of the existing inventory of marijuana.

Upon receipt of written notice that a registration certificate has been terminated, the compassion center has 30 business days to request, in writing, a hearing, for the purpose of review of such action. The hearing process shall follow the procedures in §§ 9.4-9.13 of the Regulations.

**E. VENDOR(S) MONITORING/EVALUATION**

The vendor(s) may be monitored/evaluated on-site at the registered compassion center and any related growing facilities at the discretion of the Department. Failure of the vendor(s) to cooperate with the monitoring/evaluation process or to resolve any problem(s) identified in the monitoring/evaluation may be cause for termination of registration certificate and agreement.

**F. PAYMENT**

This is a zero-cost agreement. The selected vendor(s) will be issued a registration certificate that will be a permit for operation as a registered compassion center.

Payment of the \$5,000 application fee will be accepted in a check or money order made payable to "DPH Medical Marijuana Program." This payment is due with the submission of the application to the Department.

Payment of the \$40,000 bi-annual registration fee will be accepted in a check or money order made payable to "DPH Medical Marijuana Program." Only the selected vendor(s) will be responsible for this registration fee and it will be due with the vendor(s) signed agreement.

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**G. W-9 INFORMATION SUBMISSION**

Effective January 5, 2009, a new vendor process and use of the new Delaware Substitute Form W-9 was implemented by the Delaware Division of Accounting. With the development of the new Delaware Substitute Form W-9, state organizations are no longer responsible for collecting the Form W-9 from vendor(s)s. The vendor(s) has the capability of submitting the required Form W-9 electronically and directly to the Delaware Division of Accounting for approval.

Awarded vendor(s) will be required to submit their Form W-9 by accessing this website, <http://accounting.delaware.gov/>. The vendor(s) will complete the secure form, read the affirmation, and submit the form by clicking the "Submit" button. Delaware Division of Accounting staff will review the submitted form for accuracy, completeness, and standardization. Once all the requirements are met, the form will be uploaded to the vendor(s) file and approved. The vendor(s) is/are then able to be paid for services provided.

For those vendors that do not have internet access, a printable version of the Delaware Substitute Form W-9 can be faxed or mailed to the vendor(s). Upon completion, the vendor(s) will then fax or mail the form directly to the vendor(s) staff at the Delaware Division of Accounting. All vendor requests, additions and changes, will come directly from the vendor(s). Questions for vendors who do not have internet access, contact vendor staff at (302) 734-6827.

**This applies only to the successful vendor(s) and should be done when successful agreement negotiations are completed. It is not required to be done as part of the submission of the vendor(s)'s application.**

**H. REQUIRED REPORTING**

One of the primary goals in administering the agreement resulting from this RFA is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the agreement. The integrity of future agreements revolves around our ability to convey accurate and realistic information to all interested vendors.

Registered Compassion Centers are to submit regular reports listing retail sales and inventory status. Quarterly reports must be submitted timely to allow program staff to closely monitor compliance with the program regulations.

All registered patients receiving dispensed medical marijuana from the registered compassion center must be reported by the compassion center on their regular usage reports.

**I. ADDITIONAL ITEMS REQUIRED FOR SELECTED VENDOR(S) ONLY**

When a vendor(s) is/are notified that the Department has approved its application and selected its application for the agreement negotiation process, the applicant shall submit updated information, if anything has changed from the application, to the Department before agreement negotiations will proceed.

A certification fee made payable to the DPH Medical Marijuana Program, in the amount of \$40,000, will be required at the time of agreement signing.

**V. FORMAT AND CONTENT OF RESPONSE**

Applications will be 50 pages or less and shall contain the following information, adhering to the order as shown:

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**A. APPLICATION FEE**

A non-refundable application fee, in the form of a check or money order made payable to DPH Medical Marijuana Program, in the amount of five thousand dollars (\$5,000), shall be submitted with the application.

**B. VENDOR(S)'S SIGNATURE FORM**

This form, found in the Appendix C, must be completed and signed by the vendor(s)'s authorized representative.

**C. TITLE PAGE**

The Title page shall include: 1) the RFA subject; 2) the name of the applicant; 3) the applicant's full address; 4) the applicant's telephone number; 5) the name and title of the designated contact person; and 6) application opening date (**October 28, 2020 at 11:00am**).

**D. TABLE OF CONTENTS**

The Table of Contents shall include a clear and complete identification of information presented by section and page number.

**E. CONFIDENTIAL INFORMATION**

Per Section §4920A Confidentiality of the Act, none of the application information will be subject to the Freedom of Information Act. All portions of the application can be submitted.

*§ 4920A. Confidentiality*

*(a) The following information received and records kept by the Department for purposes of administering this chapter are confidential and exempt from the Delaware Freedom of Information Act [Chapter 100 of Title 29], and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the State of Delaware to perform official duties pursuant to this chapter:*

*(2) Applications and renewals, their contents, and supporting information submitted by or on behalf of compassion centers and safety compliance facilities in compliance with this chapter, including their physical addressees.*

*(3) The individual names and other information identifying persons to whom the Department has issued registry identification cards.*

*(4) Any dispensing information required to be kept under § 4919A of this title or Department regulation shall identify cardholders and registered compassion centers by their registry identification numbers and not contain names or other personally identifying information.*

**F. QUALIFICATIONS AND EXPERIENCE**

This section shall contain sufficient information to demonstrate the organization's legal status, knowledge, experience and staff expertise to carry out the establishment and maintenance of a registered compassion center. A statement must be included that the vendor either has or certifies he/she will secure a Delaware Business License during the agreement negotiation process. The Business Code shall be 377-Wholesaler-Any Products.

**1. Organizational Structure**

Describe the proposed team structure and internal controls to be used in the operation of the registered compassion center, including any subcontractors. This section should include at least the following information and documentation:

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- a. Proposed legal name of the registered compassion center;
- b. Certificate and articles of incorporation (for corporations); certificate of partnership and partnership agreement (for partnerships); certificate of organization and operating agreement (for limited liability corporations);
- c. Evidence of the organization's not-for-profit status. This can be IRS certification of tax-exempt status, or other written materials allowing the Department to determine the compassion center's ability to comply with the not-for-profit mandate. This should also include a description of how the registered compassion center will operate on a not-for-profit basis; and
- d. Proposed operating bylaws.

2. Agents of the Registered Compassion Center and Organization

Include all board members, officers, owners, employees, volunteers, or other person involved with the ownership or operation of the registered compassion center.

At a minimum, the following information shall be included in this section:

- a. For each proposed agent, provide the name, address and date of birth;
- b. For each proposed agent, provide the report of criminal history background check;
- c. Any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board was fined or had a registration or license suspended or revoked in any administrative or judicial proceeding;
- d. A list of all persons or business entities having five percent (5%) or more ownership in the registered compassion center, whether direct or indirect and whether the interest is in profits, land or building, including owners of any business entity which owns all or part of the land or building;
- e. A list of all persons or business entities having direct or indirect authority over the management or policies of the registered compassion center; and
- f. The identities of all creditors holding a security interest in the premises, if any.

3. Ability, capacity, skills and expertise of the organization

Describe your organization's ability, capacity, skills and other expertise in product and industry knowledge, including but not limited to the following:

- How marijuana or agricultural products are grown, cultivated, harvested, cured, processed, packaged, labeled and prepared for retail sale;
- Various types of marijuana strains and how they impact qualifying debilitating medical conditions, giving special attention to the conditions accepted by the Delaware MMP;
- Different forms in which to buy or sell marijuana (i.e. dried, concentrates, tinctures, etc.);
- How marijuana should be packaged, labeled, transported, and sold at retail level;
- How retail marijuana should be recalled and accounted for;
- How marijuana should be destroyed if overproduced, contaminated, or recalled;
- Any experience with the marijuana industry that shows the level of expertise of your company; and
- Describe your company's ability, capacity, skills and expertise in product quality standards.

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**G. LOCATION AND SECURITY OF COMPASSION CENTER**

This section should describe the details of the proposed location and facility of the registered compassion center, including all proposed security measures.

1. Location

Include the following information regarding the proposed location for the registered compassion center and any other proposed location, if any, where marijuana will be securely cultivated, harvested, packaged, labeled, or otherwise prepared for distribution by the registered compassion center:

a. If precise addresses are known:

- The proposed physical address or addresses;
- Evidence of compliance with local zoning laws for each physical address;
- Evidence of compliance that the sites are not located within 500 feet of a property line of a preexisting public or private school; and
- Legally- binding evidence of site control (e.g., deed, lease, option, etc.) sufficient to enable the applicant to have use and possession of the subject property for the intended purpose.

b. If precise address(es) have not been determined:

- Identify the general location where it would be sited;
- Any relevant information known about how site control will be obtained (e.g. purchased, leased, etc.); and
- When the precise location would be established.

2. Facility description and proposed security

a. Provide a description of enclosed locked facility that would be used in the cultivation of marijuana, including steps to ensure that the marijuana production, packaging, labeling, or distribution shall not be visible from the street or other public area.

b. A proposed plan to implement proper and appropriate security and safety measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana. The proposed plan should demonstrate compliance with the mandates in the Scope of Services of this RFA, the Act and the regulations. This should include the proposed alarm system, video surveillance, and inventory controls.

**H. VENDOR REFERENCES**

The names and phone numbers of at least three (3) organizations/agencies for whom the vendor(s) carried out a similar project must be included. If no similar project has been conducted, others requiring comparable skills can be used.

Vendor(s) 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. The Evaluation/Selection Review Committee will consider these additional references and may contact each of these sources. Information regarding vendor(s) performance gathered from these sources may be included in the Committee's deliberations and factored in the final scoring of the bid. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the bid.

**I. PROPOSED METHODOLOGY AND WORK PLAN**

This section shall describe in detail the approach that will be taken to carry out the activities described in the Scope of Services section of this RFA. Specific completion dates for various

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tasks must be shown. The work plan shall outline specific objectives, activities and strategies, and resources.

1. Products and Services provided

This section shall contain a list of proposed products and services that will be offered by the compassion center to registered patients should the application be selected and awarded the registration certificate.

This should contain details of the varieties of marijuana that will be offered and the quantities of each. It should also contain details of paraphernalia used to administer the drug that will be available to patients.

2. Packaging

This section shall contain an example of the design and security features of the containers proposed for use both in the retail store as well as the packaging for dispensed marijuana. This section should demonstrate compliance with the requirements for Medical Marijuana packaging as contained in the Act, the Regulations, and this RFA.

3. Operations

This section shall contain a draft Operations Manual demonstrating compliance with the Scope of Services in this RFA, the Act, and the Regulations. Should the application be selected, the Operations Manual shall be finalized, implemented, and maintained on the premises. It shall also be supplied to the Department for review.

4. Growing Strategy

As indicated in the Scope of Services.

5. Outreach Plans

As indicated in the Scope of Services.

6. Required Training

This section should outline the proposed training curriculum for the agents of the compassion center, as well as the proposed outreach education for the patients and caregivers.

7. Pricing and Payment

This section should include proposed pricing schedules for the retail medical marijuana products and paraphernalia as well as for patient and caregiver education and outreach services. It should include related information, such as a sliding scale, that may be used to provide access to affordable medical marijuana by registered patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance.

This section should also include financial policy plans including payment schedules that may be offered to patients, financial institution, examples of receipt-of-payment forms, and a list of the forms of payment the registered compassion center will accept (cash, checks, credit/debit).

**J. CERTIFICATION AND STATEMENT OF COMPLIANCE**

The vendor(s) must include statements that the applicant agency complies with all Federal and Delaware laws and regulations pertaining to equal opportunity and affirmative action. In addition, compliance must be assured in regard to Federal and Delaware laws and regulations relating to confidentiality and individual and family privacy in health care delivery and in the collection and reporting of data (See Appendices D & E).

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**K. STANDARD AGREEMENT**

**1. Agreement Boilerplate**

Appendix F is a copy of the standard boilerplate agreement for the State of Delaware, Delaware Health and Social Services, Division of Public Health. This boilerplate will be the one used for any agreement resulting from this Request for Applications (RFA). If a vendor(s) has an objection to any agreement provisions or the RFA and its procurement provisions, objections shall be stated in the Transmittal Letter of the vendor's application. Execution of the agreement is NOT required with application submission. The agreement is provided as a courtesy for review by an interested vendor's legal group.

**2. Potential Additions to the Boilerplate**

The lesser sanctions in the agreement are not all-inclusive and may be expanded for the agreement resulting from this RFA. Other details related to application-specific requirements, or other registered compassion center specific details, will be included in the selected vendor(s)'s agreement. The appendices of the agreement may include, but are not limited to, the following documents:

- A schedule of required record retention,
- Frequently Asked Questions information page to be given to patients when marijuana is dispersed,
- The Registry Card Application for the Compassion Center Agents, and
- Details for the required Annual Report.

**VI. BUDGET**

A list of financial obligations and fiscal operating principles that will be required of the selected vendor(s) is included in the Scope of Services section of this RFA. In addition to demonstrating availability of sufficient capital to establish and maintain the compassion center, the application should also include a financial business plan that incorporates the listed obligations and principles. Sources of funding shall be identified as described in the records section of this RFA.

Suggested formats for a line item budget are included in Appendices A & B of this RFA. Details of specific equipment required should be included in the budget worksheet, including price of purchase or lease and how it will be used. Applicants shall also describe any factors that may have an impact on the projected budget.

A proposed plan for providing medical grade marijuana to registered, qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance should be placed in this section as well.

**VII. GENERAL INSTRUCTIONS FOR SUBMISSION OF APPLICATIONS**

**A. RFP SUBMISSIONS**

- 1. ALL PROPOSALS MUST BE SUBMITTED ONLINE ON THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES' Eprocurement portal, which is currently found at <https://dhss.bonfirehub.com/>. Responses submitted by hard copy, mail, facsimile, or e-mail will not be accepted.**

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**2. 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 RFA, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

**3. Proposals**

To be considered, all proposals must be submitted through Bonfire at <https://dhss.bonfirehub.com/> and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals.

All proposals must be submitted prior to **11:00 AM (EDT) on October 28, 2020**.

**PROPOSAL REQUIREMENTS**

1. Proposals must be received before the Proposal Due Date and Time, as identified in the Procurement Schedule for this RFP. Responses received after the Proposal Due Date and Time will not be accepted.

2. Upload your submission at: <https://dhss.bonfirehub.com>.

**Important Notes:**

- Logging in and/or uploading the file(s) does not mean the response is submitted. Users must successfully upload all the file(s) and **MUST** click the submit button before the proposal due date and time.
- Users will receive an email confirmation receipt with a unique confirmation number once the submission has been finalized. This will confirm that the proposal has been submitted successfully.
- Each submitted item of Requested Information will only become visible to DHSS after the proposal due date and time.
- If the file is mandatory, you will not be able to complete your submission until the requirement is met.
- Uploading large documents may take significant time depending on the size of the file(s) and your Internet connection speed. The maximum upload file size is 1000 MB.
- Minimum system requirements: Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. Java Script must be enabled.
- Notarizations are no longer required.

Need Help? Please contact Bonfire directly at [Support@GoBonfire.com](mailto:Support@GoBonfire.com) or 1(800)654-8010 ext. 2 for technical questions or issues related to your submission. You can also visit their help forum at <https://bonfirehub.zendesk.com/hc>.

Any proposal submitted after the Deadline for Receipt of Proposals date shall not be accepted. 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.

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**B. CLOSING DATE**

All responses must be received no later than **October 28, 2020 at 11:00am**. Later submission will be cause for disqualification.

**C. OPENING OF APPLICATIONS**

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

There will be no public opening of Applications. The contents of any application shall not be disclosed to any parties absent a court order.

**D. APPLICATION EXPIRATION DATE**

Prices quoted in the application shall remain fixed and binding on the vendor(s) at least through the two-year agreement period. The State of Delaware reserves the right to ask for an extension of time if needed.

**E. ACKNOWLEDGEMENT OF UNDERSTANDING OF TERMS**

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

**F. REALISTIC APPLICATIONS**

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

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

**G. NON-CONFORMING APPLICATIONS**

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

**H. NOTIFICATION OF ACCEPTANCE**

Notification of the Department's intent to enter into agreement negotiations will be made in writing to all vendors.

**I. QUESTIONS**

Questions must be submitted before the due date identified in the Procurement Schedule for this RFP. All inquiries must be submitted in the Q/A section of the project listing in the [Bonfire Procurement Portal \(https://dhss.bonfirehub.com\)](https://dhss.bonfirehub.com).

The Department's response to questions will be posted, according to the procurement schedule, under the project listing in Bonfire and to the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov/>.

To contact Delaware Health and Social Services or ask questions in relation to this RFP, respondents must register with the Organization's public purchasing portal at <https://dhss.bonfirehub.com> (the "Portal") and initiate the communication electronically through

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the Opportunity Q&A. Delaware Health and Social Services will not accept any respondent's communications by any other means, except as specifically stated in this RFP.

**J. AMENDMENTS TO APPLICATIONS**

Amendments to Applications will not be accepted after the deadline for application submission has passed. The State reserves the right at any time to request clarification and/or further technical information from any or all applicants submitting Applications.

**K. APPLICATIONS BECOME STATE PROPERTY**

All Applications become the property of the State of Delaware and will not be returned to the vendors.

**L. NON-INTERFERENCE CLAUSE**

The awarding of this agreement and all aspects of the awarded Applicants contractual obligations, projects, literature, books, manuals, and any other relevant materials and work will automatically become property of the State of Delaware. The awarded vendor(s) will not in any manner interfere or retain any information in relationship to the contractual obligations of said agreement, at the time of the award or in the future tense.

**M. INVESTIGATION OF VENDOR(S)'S QUALIFICATIONS**

Delaware Health and Social Services may make such investigation as it deems necessary to determine the ability of the vendor(s) to furnish the required services, and the vendor(s) shall furnish such data as the Department may request for this purpose.

**N. RFA AND FINAL AGREEMENT**

The contents of the RFA will be incorporated into the final agreement and will become binding upon the successful vendor(s). If the vendor(s) is/are unwilling to comply with any of the requirements, terms, and conditions of the RFA, objections must be clearly stated in the application. Objections will be considered and may be subject to negotiation at the discretion of the State.

**O. APPLICATION AND FINAL AGREEMENT**

The contents of each application will be considered binding on the vendor(s) and subject to subsequent agreement confirmation if selected. The contents of the successful application(s) will be included by reference in the resulting agreement.

All terms, and conditions contained in the application will remain fixed and valid for the length of the resulting agreement.

**P. COST OF APPLICATION PREPARATION**

All costs for application preparation will be borne by the vendor(s).

**Q. PROPOSED TIMETABLE**

The Department's proposed schedule for reviewing Applications is outlined as follows:

<u>Activity</u>	<u>Date</u>
RFA Advertisement	September 2, 2020
Questions Due	September 16, 2020
Mandatory Pre-application Meeting	None
Answers to Questions	September 30, 2020

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Application Due	October 28, 2020
Selection Process Begins	October 29, 2020
Vendor(s) Selection (tentative)	November 12, 2020
Agreement/Registration Certificates issued (tentative)	December 10, 2020

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**R. CONFIDENTIALITY AND DEBRIEFING**

All data, documentation, and innovations developed as a result of these contractual services shall become the property of the State of Delaware. Applications will not be public record as defined by Delaware’s Freedom of Information Act, Title 29, Chapter 100 of the Delaware Code pursuant to 16 *Del. C.* § 4920A.

If a vendor wishes to request a debriefing, it must be submitted by a formal letter to the Procurement Administrator, Herman M. Holloway Campus, Delaware Health and Social Services Main Building, 2nd Floor, Room 257, 1901 N. DuPont Highway, New Castle, Delaware 19720 within 10 days after receipt of Notice of Non-Award. The letter must specify reasons for the request.

**VIII. SELECTION PROCESS**

All Applications submitted in response to this RFA will be reviewed by the Medical Marijuana Selection Committee and others as may be deemed appropriate by the Department. Applications for compassion center registration certificates will be evaluated using an impartial and numerically scored competitive bidding process. Each application will be independently reviewed and rated against review criteria. Additionally, applicants may be asked to host a Public Forum near the proposed location to collect public comment and feedback.

Selection will be based upon the recommendations of the review team. The registration considerations shall consist of the following criteria.

**A. APPLICATION EVALUATION CRITERIA**

A maximum of 100 points is possible.

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<b><u>Category</u></b>	<b><u>Weight</u></b>
<b>1) Meets mandatory RFA provisions:</b> <b>a.</b> Forms properly submitted <b>b.</b> Application length of 50 pages or less	<b>Pass/Fail</b>
<b>2) Meets all state legislative mandates:</b>  <b>a.</b> Submission of all Department required materials, including application fee  <b>b.</b> Documentation of not-for-profit status or evidence of operations consistent with not-for-profit status.	<b>Pass/Fail</b>

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<b><u>Category</u></b>	<b><u>Weight</u></b>
<p><b>c.</b> Proposed location is demonstrated to be in accordance with local zoning regulations and proper distance from schools.</p> <p><b>d.</b> Satisfaction of the minimal Medical Marijuana Regulations for security, oversight, and record keeping.</p> <p><b>e.</b> Proposed plans meet all requirements of §4919A of the Act.</p> <p><b>f.</b> None of the prospective principal officers or board members:</p> <ul style="list-style-type: none"> <li>• Have been convicted of an excluded felony offense nor have been convicted of a misdemeanor drug offense, as provided in Title 16, within 5 years from the date of application that is not excluded by §4902(g)(2)(b);</li> <li>• Have served as principal officer or board member for a registered compassion center that has had its registration certificate revoked; and</li> <li>• Are younger than 21 years of age.</li> </ul>	
<p><b>3) Stability, Qualifications, and Experience of vendor(s)</b></p> <p><b>a.</b> The principal officer and board members' character and relevant experience, including any training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany, analytical testing, or marijuana cultivation, preparation, and testing and their experience running businesses or not-for-profits</p> <p><b>b.</b> Summary of Bylaws</p> <p><b>c.</b> Administrative oversight of business</p> <p><b>d.</b> Past experience in successfully opening and operating quality programs of a similar type and with a similar population</p> <p><b>e.</b> Demonstrated support of listed program priorities</p> <p><b>f.</b> Available resources, including demonstration of sufficient capital to establish and maintain the compassion center according to this RFA, the Act, and the Regulations</p>	<b>20 pts</b>
<p><b>4) Responses to Scope of Services.</b></p> <p><b>a.</b> Proposed plan for operations and services</p> <p><b>b.</b> Plan for packaging, labeling, and dispensing marijuana</p> <p><b>c.</b> Ability to grow marijuana without the use of pesticides</p> <p><b>d.</b> Proposed plan to minimize excess marijuana inventories, control diversion and connect with patients</p>	<b>50 pts</b>

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<b><u>Category</u></b>	<b><u>Weight</u></b>
<ul style="list-style-type: none"> <li>e. Demonstrate ability to provide an adequate supply and variety of medical marijuana &amp; marijuana-based products (what are the proposed quantity of product per year)</li> <li>f. Plan for making medical marijuana available on an affordable basis to registered qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance</li> <li>g. Product line diversity (strains, potency, ingestion options)</li> <li>h. Proposed seed to sale and records management system</li> <li>i. Identify the growing medium, lighting system, irrigation system and proposed nutrient products</li> </ul>	
<p><b>5) Safety, Security and Location Suitability</b></p> <ul style="list-style-type: none"> <li>a. The suitability of the proposed location or locations, including but not limited to compliance with any local zoning laws, distance from existing schools, and the geographic convenience to patients from throughout the state of Delaware to compassion centers if the applicant were approved</li> <li>b. Sufficiency of applicant’s plans for safety, security, and prevention of diversion including inventory controls and security devices employed</li> <li>c. Proposed plan for safe and accurate packaging and labeling of medical marijuana, including all items listed in scope of services</li> <li>d. Plan for safe and secure transportation of products</li> <li>e. Banking and credit/debit card agreements</li> </ul>	<b>20 pts</b>
<p><b>6) Certification of Disadvantaged or Minority Status</b> (Delaware Office of Supplier Diversity MBE/WBE/VOB certification) Maximum of 10 points for multiple categories.</p> <ul style="list-style-type: none"> <li>a. Veteran Owned Business</li> <li>b. Woman Owned Business</li> <li>c. Minority Owned Business</li> </ul>	<b>10 pts</b>
<b>Total Possible Points</b>	<b>100pts</b>

Applicants requested to hold Public Forums for comments and feedback will be contacted by the Department. Applicants are expected to coordinate the time and location of the Public Forum with the Department and demonstrate adequate public outreach for the meeting.

Upon selection of a vendor, or vendors, a Division of Public Health representative will enter into negotiations with the vendor(s) to establish an agreement.

**B. CONSULTANTS AND LEGAL COUNSEL**

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

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**APPENDIX A**

BUDGET SUMMARY

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**BUDGET SUMMARY SHEET**

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CATEGORY/DESCRIPTION	Year 1	Year 2	Year 3
<b><u>Income</u></b>			
Sales of paraphernalia			
Sales of marijuana			
Investment Capital			
<b>Total Income</b>			
<b><u>Salary/Wages</u></b>			
CEO			
Senior VPs			
Department Directors			
Team Leaders			
Receptionists			
Advisors			
Cultivators			
Testers			
Security Staff			
<b>Total Salary/Wages</b>			
<b><u>Fringe Benefits</u></b>			
Social Security			
Unemployment Compensation			
Workers Comp			
Health Benefits			
Retirement			
<b>Total Fringe Benefits</b>			
<b><u>Travel/Training</u></b>			
Travel for training			
Dispensary Operation Trainer			
<b>Total Travel/Training</b>			
<b><u>Contractual</u></b>			
Rent			
CAM			
Electric			
GAS			
Water and Sewer			
Telephone/Internet			
Insurance			
Equipment Rental			
Outside Security & Monitoring			
HVAC & Heating Maintenance			

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Interest Expense			
<b>Total Contractual</b>			
<b><u>Supplies</u></b>			
Grow Supplies			
Packaging Supplies			
Janitorial			
Office			
<b>Total Supplies</b>			
<b><u>Professional Fees</u></b>			
Legal			
Accounting/Auditing			
<b>Total Professional Fees</b>			
<b><u>Other Expenses</u></b>			
Marketing/Community outreach			
Permitting Fee	\$40,000		\$40,000
Software licensing fee			
<b>Total Other Expenses</b>			
<b>Grand Total</b>			

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**APPENDIX B**  
**BUDGET WORKSHEET**

## Budget Worksheet

(can attach additional sheets if necessary)

Category / Description	Amount
<u>Salary / Wages</u>	
List each position title: Directors, Supervisors, Healthcare Workers, Nutritionists, Drivers, Case Managers, Janitors, Instructors, Coordinators, etc.	
-	-
<b>Total: Salary / Wages</b>	

<u>Fringe Benefits</u>	
Proportionate for above labor including Social Security, unemployment compensation, life insurance, worker's compensation, health insurance, pension, etc. that will be paid by the Agency.	
<b>Total: Fringe Benefits</b>	

<u>Travel / Training</u>	
Include any programs staff are required to attend. Mileage reimbursement shall be no more than the IRS allowable amount. Subscriptions and association dues may be included in this category.	
<b>Total: Travel / Training</b>	

## Budget Worksheet page 2

Category / Description	Amount
<u>Contractual</u>	
Include the portions of rent, utilities, telephone, internet, Insurance, maintenance, etc. that will be paid by the Agency.	
Total: Contractual	

<u>Supplies</u>	
Include office supplies, supplies for routine building maintenance (janitorial), medical supplies, program supplies, and other related expenses.	
Total: Supplies	

<u>Other Equipment</u>	
Specify Items or lots costing \$1,000.00 or more and having a useful life of more than one year.	
Total: Other Equipment	

## Budget Worksheet page 3

<u>Indirect Costs</u>	
Identify any line items contributing to total costs not delineated in the above sections	
Total: Indirect Costs	

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**APPENDIX C**  
**APPLICANTS SIGNATURE FORM**

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**DELAWARE HEALTH AND SOCIAL SERVICES  
REQUEST FOR APPLICATION**

**APPLICANTS SIGNATURE FORM**

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

**THE FOLLOWING MUST BE COMPLETED BY THE VENDOR:**

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

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**APPENDIX D      CERTIFICATION SHEET**



**DELAWARE HEALTH AND SOCIAL SERVICES  
REQUEST FOR APPLICATION**

**CERTIFICATION SHEET**

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

- a. They are a regular dealer in the services being procured.
- b. They have the ability to fulfill all requirements specified for development within this RFA.
- c. They have independently determined their prices.
- d. They are accurately representing their type of business and affiliations.
- e. They will secure a Delaware Business License.
- f. They have acknowledged that no contingency fees have been paid to obtain award of this agreement.
- g. The Prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other vendor or with any competitor;
- h. Unless otherwise required by Law, the prices which have been quoted in this offer have not been knowingly disclosed by the vendor and prior to the award in the case of a negotiated procurement, directly or indirectly to any other vendor or to any competitor; and
- i. No attempt has been made or will be made by the vendor in part to other persons or firm to submit or not to submit an offer for the purpose of restricting competition.
- j. They have not employed or retained any company or person (other than a full-time bona fide employee working solely for the vendor) to solicit or secure this agreement, and they have not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the vendor) any fee,

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commission percentage or brokerage fee contingent upon or resulting from the award of this agreement.

k. They (check one) operate \_\_\_an individual; \_\_\_a Partnership \_\_\_a non-profit (501 C-3) organization; \_\_\_a not-for-profit organization; or \_\_\_for profit corporation, incorporated under the laws of the State of \_\_\_\_\_.

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Violations and Penalties:**

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

1. The firm offering professional services swears that it has not employed or retained any company or person working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of its employees in the professional service procurement process.
2. The firm offering the professional services has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this agreement; and
3. For the violation of this provision, the agency shall have the right to terminate the agreement without liability and at its discretion, to deduct from the agreement price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

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The following conditions are understood and agreed to:

- a. No charges, other than those specified in the cost application, are to be levied upon the State as a result of an agreement.
- b. The State will have exclusive ownership of all products of this agreement unless mutually agreed to in writing at the time a binding agreement is executed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature & Title of Official Representative

\_\_\_\_\_  
Type Name of Official Representative

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Delaware Health and Social Services, Division of Public Health

**APPENDIX E**  
**STATEMENTS OF COMPLIANCE FORM**



**DELAWARE HEALTH AND SOCIAL SERVICES  
REQUEST FOR APPLICATION**

**STATEMENTS OF COMPLIANCE FORM**

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

Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX F**

**SAMPLE CONTRACT BOILERPLATE**

**PROFESSIONAL SERVICES AGREEMENT**  
**For**  
**[ENTER CONTRACT NAME]**  
**Contract No. [Enter Contract Number]**

This Professional Services Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_ (Effective Date) and will end on \_\_\_\_\_, 20\_\_, by and between the State of Delaware, Department of Health and Social Services, Division of Public Health, ("Delaware"), and \_\_\_\_\_, (the "Vendor"), with offices at \_\_\_\_\_.

WHEREAS, Delaware desires to obtain certain services to \_\_\_\_\_; and \_\_\_\_\_.

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

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

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

**1. Services.**

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Division of Public Health Requirements, attached hereto as Appendix A; (c) Service and Budget Description, attached hereto as Appendix B; (d) Delaware's request for proposals, attached hereto as Appendix \_\_\_\_\_; and (e) Vendor's response to the request for proposals, attached hereto as Appendix \_\_\_\_\_. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

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

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

2.1. The term of the initial contract shall be from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_\_\_. The Contract may be renewed for two (2) one (1) year periods through negotiation between the Vendor and Delaware Health and Social Services

2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.

2.3. Delaware will pay Vendor for the performance of services described in Appendix \_\_\_\_\_, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix \_\_\_\_\_.

2.4. Delaware's obligation to pay Vendor for the performance of services described in Appendix \_\_\_\_\_, Statement of Work will not exceed the fixed fee amount of \$\_\_\_\_\_. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.

2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **ENTER CONTRACT NUMBER** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.

2.6. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract.

2.7. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the rate of no more than 1.0% per month. All payments should be sent to the Vendor's identified address on record with the

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State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.

- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.9. Delaware is a sovereign entity and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.
- 2.10. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- 2.11. Invoices shall be submitted to:

Contact Person's Name and/or Program Name  
Street Address  
City, DE Zip Code

### 3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.
- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and

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applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.

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

Project	Team	Title	% of Project Involvement

- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.
- 3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

**4. Time Schedule.**

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

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**5. State Responsibilities.**

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

Vendor shall return any original data provided by Delaware.

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

**6. Work Product.**

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out

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of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

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

**7. Confidential Information.**

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

**8. Warranty.**

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

**9. Indemnification; Limitation of Liability.**

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

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

**10. Employees.**

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

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

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

**11. Independent Contractor.**

- 11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.
- 11.2. Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Vendor or any of its officers, employees or other agents.
- 11.3. Vendor shall be responsible for providing liability insurance for its personnel.
- 11.4. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

**12. Dispute Resolution.**

- 12.1. At the option of, and in the manner prescribed by the Delaware Department of Health and Social Services (DHSS), the parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.
- 12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, DHSS 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 DHSS, and if the matter is not resolved through mediation, then it shall be submitted, in the sole discretion of the DHSS Secretary, for final and binding arbitration. DHSS 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

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nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits. Each party shall bear its own costs of mediation, arbitration or litigation, including attorneys' fees.

**13. Remedies**

13.1. Except as otherwise provided in this Agreement, including but not limited to Section 12 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this Agreement, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

**14. Suspension.**

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

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

**15. Termination.**

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

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

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

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

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

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and

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- b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

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

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

15.6. **Gratuities.**

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 14.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 14.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**16. 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.

**17. Assignment; Subcontracts.**

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

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

17.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the

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professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

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

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

**18. Force Majeure.**

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

**19. Non-Appropriation of Funds.**

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

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

**20. State of Delaware Business License.**

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

**21. Complete Agreement.**

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

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

21.3. Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and

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conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**22. Miscellaneous Provisions.**

- 22.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 22.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 22.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 22.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- 22.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.
- 22.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 22.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 22.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor's performance and records pertaining to this Agreement at the Vendor business office during normal business hours.
- 22.9. The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed to be in the best interest of the State.

**23. Insurance.**

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As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
  1. \$1,000,000 combined single limit each accident, for bodily injury;
  2. \$250,000 for property damage to others;
  3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
  4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 Del. C. §2118; and
  5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

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

- a. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

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

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

**Delaware Department of Health and Social Services  
Division of Public Health  
417 Federal Street  
Dover, DE 19901**

STATE OF DELAWARE  
Delaware Health and Social Services, Division of Public Health

Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

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

**24. Performance Requirements**

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

**25. There is no Performance Bond requirement.**

**26. Assignment of Antitrust Claims.**

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

**27. Governing Law.**

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

**28. Notices.**

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

To Delaware at:

Division of Public Health  
417 Federal Street  
Dover, DE 19901

STATE OF DELAWARE  
Delaware Health and Social Services, Division of Public Health

Attn: Support Services Section

To the Vendor at:


STATE OF DELAWARE  
Delaware Health and Social Services, Division of Public Health

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

For the Vendor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

For the State of Delaware, Department of Health  
and Social Services:

\_\_\_\_\_  
Molly K. Magarik, Cabinet Secretary

\_\_\_\_\_  
Date

For the Division of Public Health:

\_\_\_\_\_  
Karyl T. Rattay, MD, MS  
Director

\_\_\_\_\_  
Date