



**HOME & COMMUNITY BASED SERVICES  
FOR INDIVIDUALS WITH INTELLECTUAL & DEVELOPMENTAL DISABILITIES  
ISSUED BY DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
CONTRACT NUMBER HSS-25-001C**

**Contents:**

- I. Overview
- II. Scope of Services
- III. Required Information
- IV. Professional Services RFP Administrative Information
- V. Contract Terms and Conditions
- VI. RFP Miscellaneous Information
- VII. Attachments
- Appendix A - Minimum Mandatory Submission Requirements
- Appendix B – Scope of Work and Technical Requirements
- Appendix C – Supplemental Questionnaire
- Appendix D – Frequently Asked Questions
- Appendix E – Templates/Sample Agreements
  - o Professional Services Agreement
  - o Business Associate Agreement
  - o DTI Terms & Conditions

**\*\* CTRL Click on the headings above will take you directly to the section.**

**I. Overview**

The State of Delaware Department of Health and Social Services, Division of Developmental Disabilities Services, seeks professional services from Vendors who can provide home and community-based services (HCBS) for individuals with intellectual and developmental disabilities, including brain injury, autism spectrum disorder, or Prader-Willi Syndrome.. This request for proposals (“RFP”) is issued pursuant to 29 Del. C. §§ [6981 and 6982](#).

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

|                        |           |
|------------------------|-----------|
| Public Notice          | 7/1/2025  |
| Deadline for Questions | 7/15/2025 |



|                                   |                          |
|-----------------------------------|--------------------------|
| Response to Questions Posted by   | 7/29/2025                |
| Deadline for Receipt of Proposals | 9/30/2025 at 1:00 PM EST |
| Estimated Notification of Award   | 10/31/2025               |

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3).

Furthermore, the transmittal letter must attest to the fact, at a minimum, that the Vendor shall not store or transfer non-public State of Delaware data outside of the United States.

For technology related solicitations, Vendors may refer to the Delaware Department of Technology and Information identified terms and conditions included in this solicitation.

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

**A pre-bid meeting has NOT been established for this Request for Proposal.**

**Questions may be submitted no later than July 15, 2025.** All inquiries must be submitted in the Public 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/> by July 29, 2025.



## II. Scope of Services

Delaware Division of Developmental Disabilities Services (DDDS) provides home and community-based services and supports as an alternative to institutional services to individuals with intellectual and/or developmental disabilities (IDD), including brain injury, autism spectrum disorder, and Prader-Willi Syndrome.

Most of DDDS's services are funded through a Medicaid Home and Community-Based authority. DDDS has continuously operated a 1915 (c) Home and Community Based waiver since 1987.

DDDS services are designed to enable the individual to live safely in the community and to respect and support their desire to work or engage in other productive activities.

DDDS has established fee for service rates for each service. Rates for home and community based served are computed pursuant to methodologies approved by CMS in the DDDS Lifespan Home and Community Based 1915 (c) Medicaid Waiver. Rates are published for each fiscal year on the DDDS website. Rates are subject to change based on appropriation of funds by the Delaware legislature. Vendors must agree to accept the DDDS rates as a condition for being awarded a contract. No negotiation of rates is permitted. The most current rates are published on the DDDS website at the link below:

[https://dhss.delaware.gov/dhss/ddds/waiver\\_rates.html](https://dhss.delaware.gov/dhss/ddds/waiver_rates.html)

DDDS needs to contract with Vendors of home and community-based services listed below:

- Assistive Technology
- Behavior Consultation
- Benefits Counseling
- Career Assessment and Exploration
- Community Participation
- Community Transition
- Day Habilitation
- Financial Coaching
- Home Accessibility/Adaptations
- Medical Residential Habilitation
- Nurse Consultation
- Orientation and Mobility
- Personal Care
- Prevocational Services
- Residential Habilitation
- Residential Habilitation-provider type: Shared Living Agency
- Respite Care
- Specialized Medical Equipment and Supplies
- Supported Employment - Individual
- Supported Employment – Small group
- Supported Living
- Vehicle Accessibility/Adaptations



**Appendix B – Home and Community Based Services provides detailed service descriptions.**

(Please refer to [Appendix B](#), below, for additional details.)

All awarded vendors will conduct their business and provide services in compliance with all applicable State and Federal laws, rules, policies, and procedures which are incorporated into this Agreement by reference, including with and without limitations, the laws, rules, policies, and procedures that are listed and referenced on the websites located at the following URL addresses:

Division of Developmental Disabilities Policies:

[http://dhss.delaware.gov/ddds/ddds\\_policy\\_main.html](http://dhss.delaware.gov/ddds/ddds_policy_main.html)

Division of Developmental Disabilities Services Provider Standards for Home and Community Based Services:

[https://dhss.delaware.gov/dhss/ddds/ddds\\_policy\\_main.html](https://dhss.delaware.gov/dhss/ddds/ddds_policy_main.html)

Provider Specific Policy Manual for DDDS Lifespan Home and Community Based Waiver and State Plan Rehabilitative Services for Persons with Intellectual Developmental Disabilities:

[https://medicaidpublications.dhss.delaware.gov/docs/DesktopModules/Bring2mind/DMX/API/Entries/Download?Command=Core\\_Download&EntryId=910&language=en-US&PortalId=0&TabId=94](https://medicaidpublications.dhss.delaware.gov/docs/DesktopModules/Bring2mind/DMX/API/Entries/Download?Command=Core_Download&EntryId=910&language=en-US&PortalId=0&TabId=94)

### **III. Required Information**

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

#### **A. Minimum Requirements**

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

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.



4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section V, Item G, subsection 8 (insurance).
5. Provide copies of Division of Developmental Disabilities Services provider qualification letter(s).
6. Complete, sign and submit Appendix C – Supplemental Questionnaire.
7. Submit a Transmittal Letter that meets the requirements on pages 1-2 of this RFP.

**B. General Evaluation Requirements**

1. Experience and Reputation - this will be demonstrated by Proof of Licensure (if required for the service(s) the Vendor proposes to provide, as indicated in Appendix B – Home and Community Based Service Descriptions.)
2. Expertise - This will be demonstrated by the Provider Qualification Letter(s) and the completed and signed Appendix C – Supplemental Questionnaire.
3. Capacity to meet requirements – This will be demonstrated by Proof of Insurance coverage and Proof of Delaware Business License, or Proof that Delaware Business License application process has been initiated or IRS 501(c)(3) Determination Letter.

**IV. Professional Services RFP Administrative Information**

**A. RFP Issuance**

**1. Public Notice**

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

**2. Obtaining Copies of the RFP**

This RFP is available in electronic form through the State of Delaware Procurement website at [www.bids.delaware.gov](http://www.bids.delaware.gov) and on Bonfire at <https://dhss.bonfirehub.com>.

**Paper copies of this RFP will not be available.**

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

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



**4. RFP Designated Contact**

All requests, questions, or other communications about this RFP shall be made through Bonfire at <https://dhss.bonfirehub.com>.

Communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor.

Vendors should rely only on information posted at <https://dhss.bonfirehub.com>.

The RFP designated contact is:

Kami Giglio  
Assistant Director of Community Services for Policy and Planning  
Division of Developmental Disabilities Services  
Building#101BB, Office #103A  
Stockley Center  
26351 Patriot's Way  
Georgetown, DE 19947  
[kamin.giglio@delaware.gov](mailto:kamin.giglio@delaware.gov)

Contracts, Management and Procurement Contact:

Eddie Mui  
Management Analyst III  
DHSS\_DMS\_dmsprocure@delaware.gov

**5. Consultants and Legal Counsel**

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

**6. Contact with State Employees**

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

**7. Organizations Ineligible to Bid**

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or



suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

## 8. Exclusions

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

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as;
  - (1) Known failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - (2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

## B. RFP Submissions

### 1. Acknowledgement of Understanding of Terms

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

### 2. Proposals

To be considered, all proposals must be submitted in 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.

**Responses submitted by hard copy, mail, facsimile, or e-mail will not be accepted.**



All proposals must be submitted prior to **1:00 PM EST on September 30, 2025.**

### **PROPOSAL REQUIREMENTS**

- a. 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.

- b. 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: 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)354-8010 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 will 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.

**3. Proposal Modifications**

Any changes, amendments or modifications to a proposal must be submitted through Bonfire prior to the proposal due date. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

**4. Proposal Costs and Expenses**

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

**5. Proposal Expiration Date**

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through December 31, 2026. The State of Delaware reserves the right to ask for an extension of time if needed.

**6. Late Proposals**

Proposals submitted after the specified date and time will not be accepted by the Bonfire Portal. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt by Bonfire.

**7. Proposal Opening**

The State of Delaware will receive proposals via Bonfire until the date and time shown in this RFP. Proposals will be opened in the presence of State of Delaware personnel.

There will be no public opening of proposals, but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

**8. Non-Conforming Proposals**

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

**9. Concise Proposals**

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner.



Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

#### **10. Realistic Proposals**

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

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

#### **11. Confidentiality of Documents**

The State of Delaware and its constituent agencies are required to comply with the State of Delaware Freedom of Information Act, 29 Del. C. § 10001, et seq. ("FOIA"). FOIA requires that the State of Delaware's records are public records (unless otherwise declared by FOIA or other law to be exempt from disclosure) and are subject to inspection and copying by any person upon a written request. All proposals are subject to FOIA's public disclosure obligations.

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

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

Vendor(s) may submit portions of a proposal considered to be confidential business information in separate file(s) identified as "Confidential Business Information" and include the specific RFP number. The file must contain a letter from the vendor's legal counsel describing the documents in the file, representing in good faith that the information in each document is not "public



record” as defined by 29 Del. C. § 10002, and briefly stating the reasons that each document meets the said definitions.

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

## **12. Multi-Vendor Solutions (Joint Ventures)**

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

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

### **a. Primary Vendor**

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

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to



the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

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

**b. Sub-contracting**

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

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name.

**The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any subcontractors must be approved by State of Delaware.

**c. Multiple Proposals**

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

**13. Sub-Contracting**

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

The use of subcontractors **will** be permitted for this project.

If a subcontractor is going to be used, this needs to be specified in the proposal, 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 contractor.

The contract with the primary contractor will bind sub or co-contractors to the primary contractor by the terms, specifications, and standards of the RFP. All such terms, specifications, and standards shall preserve and protect the rights of the agency under the RFP and any subsequent proposals and contracts with respect to the services performed by the sub or co-contractor, so that the sub or co-contractor will not prejudice such rights. Nothing in the RFP shall create any contractual relation between any sub or co-contractor and the agency.



#### **14. Discrepancies and Omissions**

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

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

#### **15. RFP Question and Answer Process**

The State of Delaware will allow written requests for clarification of the RFP.

Questions must be submitted before the due date identified in the Procurement Schedule for this RFP. All inquiries must be submitted in the "Public 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 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.

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

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



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

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

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

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

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

**19. Potential Contract Overlap**

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

**20. Supplemental Solicitation**

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

**21. Notification of Withdrawal of Proposal**

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

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



**22. Revisions to the RFP**

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at [www.bids.delaware.gov](http://www.bids.delaware.gov) and <https://dhss.bonfirehub.com>. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

**23. Exceptions to the RFP**

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

**24. Business References**

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

**25. Award of Contract**

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

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

**a. RFP Award Notifications**

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

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

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



State of Delaware. The award is subject to the appropriate State of Delaware approvals.

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

## **26. Cooperatives**

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

## **C. RFP Evaluation Process**

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

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

### **1. Proposal Evaluation Team**

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

### **2. Proposal Selection Criteria**

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

The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all



instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team’s consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* § [6986](#). Such selection will be based on the following criteria:
  - Pursuant to section 1902(a)(23) of the Social Security Act any Medicaid eligible DDDS service recipient must be able to receive covered services from any qualified provider willing to furnish such services. DDDS must ensure an adequate supply of qualified vendors for each home and community based service it offers. This open and continuous RFP will generate the network of vendors.

**Criteria Weight**

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

| Criteria  | Weight    |
|---|-----------|
| Proof of Insurance as listed in RFP                             | Pass/Fail |
| Delaware Business License or IRS 501(c)(3) Determination Letter | Pass/Fail |
| Completed and signed Vendor Affirmation Attachment 2            | Pass/Fail |
| Other licenses as required in Appendix B                        | Pass/Fail |
| Proof of qualified provider letter(s) from DDDS                 | Pass/Fail |
| Completed and signed Supplemental Questionnaire Appendix C      | Pass/Fail |



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

### **3. Proposal Clarification**

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

### **4. References**

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

### **5. Oral Presentations**

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

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

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

## **V. Contract Terms and Conditions**

### **A. Contract Use by Other Agencies**

REF: Title 29, Chapter [6904](#)(e) Delaware Code. If no state contract exists for a certain good or service, covered agencies may procure that certain good or



service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

**B. Cooperative Use of Award**

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

**C. General Information**

1. **The term of the contract between the successful bidder and the State shall be for one (1) year with four (4) extensions for a period of one (1) year for each extension.**
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.
3. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services and may be required to sign additional agreements.
4. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
5. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions



of these agreements will be negotiated with the finalist during actual contract negotiations.

6. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions once it is received by the successful vendor.
7. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.
8. The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months after the term of the full contract has been completed.
9. Vendors are not restricted from offering lower pricing at any time during the contract term.

**D. Collusion or Fraud**

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

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

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

**E. Lobbying and Gratuities**

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of



Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

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

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

#### **F. Solicitation of State Employees**

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

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

#### **G. General Contract Terms**

##### **1. Independent Contractors**

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



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

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

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

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

**3. Work Performed in a State Building**

Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.



#### 4. **ACA Safe Harbor**

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

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

#### 5. **Licenses and Permits**

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

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

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



**6. Notice**

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

**Division of Developmental Disabilities Services  
Office of Business Support Services  
Chief of Administration  
1054 South Governor's Avenue  
Dover, DE 19901**

**7. Indemnification**

**a. General Indemnification**

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

**b. Proprietary Rights Indemnification**

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

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

- (1) Procure the right for the State of Delaware to continue using the Product(s);
- (2) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- (3) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of



the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

**8. Insurance**

- a. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
- b. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.
- c. 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.
  - (1) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
  - (2) Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
  - (3) 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:
    - (a) \$1,000,000 combined single limit each accident, for bodily injury;
    - (b) \$250,000 for property damage to others;



- (c) \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
  - (d) \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* §2118; and
  - (e) Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.
- d. The successful vendor must carry at least one of the following depending on the scope of work being performed.
  - (1) Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
  - (2) Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
  - (3) Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate
- e. Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.
- f. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Division of Developmental Disabilities Services  
Contract No: HSS-25-001C  
State of Delaware  
1054 South Governor's Avenue  
Dover, Delaware 19904
- g. 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.
- h. 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.

- i. In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.
- j. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided to agency contact prior to any work being completed by the awarded vendor(s).
- k. The State of Delaware shall not be named as an additional insured.
- l. Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

#### **9. 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.

#### **10. BID BOND**

There is no Bid Bond Requirement.

#### **11. PERFORMANCE BOND**

There is no Performance Bond requirement.

#### **12. Vendor Emergency Response Point of Contact**

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

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



### **13. Warranty**

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

### **14. Costs and Payment Schedules**

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

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

### **15. Liquidated Damages**

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

### **16. Dispute Resolution**

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

If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect 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 a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.



## 17. Remedies

Except as otherwise provided in this solicitation, including but not limited to Section V.G.15 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 solicitation, 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.

## 18. Termination of Contract

The contract resulting from this RFP may be terminated as follows by Department of Health and Social Services (DHSS) Division of Developmental Disabilities Services.

### a. Termination for Cause

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

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

### b. Termination for Convenience

The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that



event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

**c. Termination for Non-Appropriations**

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

**19. Non-discrimination**

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

**20. Covenant against Contingent Fees**

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

**21. Vendor Activity**

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



## 22. Vendor Responsibility

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

## 23. Personnel, Equipment and Services

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

## 24. Fair Background Check Practices

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

## 25. Vendor Background Check Requirements

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

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

Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract but may provide support or off-site premises service for contract vendors. Should an individual be identified, and the Vendor(s) believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the



solicitation. The Agency's decision to allow or deny access to any individual identified on a registry database is final and at the Agency's sole discretion.

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

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

## **26. Drug Testing Requirements for Large Public Works**

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

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

## **27. Work Product**

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

## **28. Contract Documents**

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



will constitute the entire agreement between the State of Delaware and the vendor.

### **29. Applicable Law**

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

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

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

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

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

### **30. 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.

### **31. Assignment of Antitrust Claims**

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust



laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

### **32. Scope of Agreement**

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

### **33. Affirmation**

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

### **34. Audit Access to Records**

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

### **35. IRS 1075 Publication (If Applicable)**

#### **a. Performance**



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

- (1) All work will be performed under the supervision of the contractor.
- (2) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.



- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
- (11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- (12) For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- (13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

**b. Criminal/Civil Sanctions**

- (1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- (2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- (3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or



disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

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

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

**c. Inspection**

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated



scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

### 36. Other General Conditions

- a. **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- b. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- c. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- d. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
- e. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered, and corrective action taken, until final system acceptance.
- f. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- g. **Assignment** – Any resulting contract shall not be assigned except by express prior written consent from the Agency.
- h. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
- i. **Billing** – The successful vendor is required to "Bill as Shipped" to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.
- j. **Payment** – The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. The agencies will authorize and process for payment of each invoice within thirty (30) days after the date of receipt of a correct invoice. Vendors are invited to offer in their proposal value added discounts (i.e., speed to pay discounts for specific payment terms). Cash or separate discounts should be computed and incorporated as invoiced.



- k. **W-9** - The State of Delaware requires completion of the [Delaware Substitute Form W-9](#) through the Supplier Public Portal at <https://esupplier.erp.delaware.gov> to make payments to vendors. Successful completion of this form enables the creation of a State of Delaware vendor record.
- l. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **HSS 25 001C** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.
- m. **Purchase Card** – The State of Delaware intends to maximize the use of the P-Card for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs into their proposals. Additionally, there shall be no minimum or maximum limits on any P-Card transaction under the contract.
- n. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

## VI. RFP Miscellaneous Information

### A. No Press Releases or Public Disclosure

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

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

### B. Definitions of Requirements

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

### C. Production Environment Requirements

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at



least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

## VII. Attachments

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

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2<sup>nd</sup> Tier Spend) Report
- Attachment 9 – Office of Supplier Diversity Application
- Appendix A – Minimum Response Requirements
- Appendix B – Service Descriptions – Home and Community Based Services (included for your information only)
- Appendix C – Supplemental Questionnaire (MUST be completed and returned with submission)
- Appendix D – Frequently Asked Questions (included for your information only)
- Appendix E – Templates/Sample Agreements
  - Professional Services Agreement
  - Business Associate Agreement
  - DTI Terms & Conditions

*[balance of page is intentionally left blank]*



### **IMPORTANT – PLEASE NOTE**

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

### **REQUIRED REPORTING**

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

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

**AGENCIES MAY NOT REMOVE SUBCONTRACTING 2<sup>ND</sup> TIER REPORTS –**  
Reporting is required by Executive Order.

In accordance with [Executive Order 49](#), the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes minority (MBE), woman (WBE), veteran owned business (VOBE), or service-disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of



the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service-disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2<sup>nd</sup> Tier report is shown as in Attachment 8.

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

*[balance of page is intentionally left blank]*



**Attachment 1**

**NO PROPOSAL REPLY FORM**

Contract No. HSS-25-001C

Title: HOME & COMMUNITY BASED SERVICES

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

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

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

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

\_\_\_\_\_  
SIGNATURE

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

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

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



**CONTRACT NO.: HSS-25-001C**  
**CONTRACT TITLE: HOME & COMMUNITY BASED SERVICES**  
**DEADLINE TO RESPOND: September 30, 2025, at 1:00 PM EST**

**NON-COLLUSION STATEMENT**

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

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

**NOTE:** Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Division of Developmental Disabilities.

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

COMPANYNAME \_\_\_\_\_ (Check one)

NAME OF AUTHORIZED REPRESENTATIVE  
 (Please type or print) \_\_\_\_\_

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

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

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

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

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

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

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

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

ADDRESS \_\_\_\_\_

CONTACT \_\_\_\_\_

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

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

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

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



CONTRACT NO: HSS-25-001C  
 CONTRACT TITLE: HOME & COMMUNITY BASED SERVICES

**EXCEPTION(S) REPORT**

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below by putting an "X" the box noted in the next sentence.

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

If you have more exceptions than the spaces provided, please copy the table & insert in the following (additional) pages.

| Exception Paragraph Section and Page # | Referenced Text from RFP | Proposed Language from Vendor |
|--|--------------------------|-------------------------------|
| Vendor Comments on Proposal            |                          |                               |
| State Response                         |                          |                               |
| Vendor Response                        |                          |                               |

| Exception Paragraph Section and Page # | Referenced Text from RFP | Proposed Language from Vendor |
|--|--------------------------|-------------------------------|
| Vendor Comments on Proposal            |                          |                               |
| State Response                         |                          |                               |
| Vendor Response                        |                          |                               |

| Exception Paragraph Section and Page # | Referenced Text from RFP | Proposed Language from Vendor |
|--|--------------------------|-------------------------------|
| Vendor Comments on Proposal            |                          |                               |
| State Response                         |                          |                               |
| Vendor Response                        |                          |                               |

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





CONTRACT NO: HSS-25-001C  
 CONTRACT TITLE: HOME & COMMUNITY BASED SERVICES

**BUSINESS REFERENCES**

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

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

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

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

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

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

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



SUBCONTRACTOR INFORMATION FORM

C

| <b>PART I – STATEMENT BY PROPOSING VENDOR</b>                            |   |                    |
|--|---|--------------------|
| 1. CONTRACT NO. HSS-25-001C<br>TITLE: HOME & COMMUNITY<br>BASED SERVICES | 2. Proposing Vendor Name:   | 3. Mailing Address |
| 4. SUBCONTRACTOR   |   |                    |
| a. NAME  | 4c. Company OSD Classification:<br>Certification Number: _____  |                    |
| b. Mailing Address:  | 4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No<br>4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No<br>4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No<br>4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No<br>4h. Service-Disabled Veteran Owned<br>Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No |                    |
| 5. DESCRIPTION OF WORK BY SUBCONTRACTOR                                  |   |                    |
| 6a. NAME OF PERSON<br>SIGNING  | 7. BY ( <i>Signature</i> )  | 8. DATE SIGNED     |
| 6b. TITLE OF PERSON<br>SIGNING   |   |                    |
| <b>PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR</b>                        |   |                    |
| 9a. NAME OF PERSON<br>SIGNING  | 10. BY ( <i>Signature</i> )   | 11. DATE SIGNED    |
| 9b. TITLE OF PERSON<br>SIGNING   |   |                    |

\* Use a separate form for each subcontractor





**SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY**

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

**Note:** Completed reports shall be saved in an Excel format and submitted to the following email address: [osd@delaware.gov](mailto:osd@delaware.gov) . The form can be located at [Office of Supplier Diversity - Division of Small Business - State of Delaware](#), bottom of the page, 'Services and Information' section, 'Subcontractor Reporting Form'.



**The Office of Supplier Diversity (OSD) has moved to the  
Division of Small Business (DSB)**

Supplier Diversity Certification Applications can be found here:  
[Certifications - Division of Small Business - State of Delaware](#)

Completed Applications can be emailed to: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

For more information, please send an email to OSD:  
[OSD@Delaware.gov](mailto:OSD@Delaware.gov) or call 302-577-8477

[Subscribe](#) to the OSD Mailing List

**New address for OSD:**

Carvel State Building  
820 N. French Street, 10<sup>th</sup> Floor  
Wilmington, DE 19801

Telephone: 302-577-8477 / Fax: 302-736-7915

Email: [OSD@Delaware.gov](mailto:OSD@Delaware.gov)

Web site: <https://business.delaware.gov/osd/>

**Dover address:**

**(Local applicants may drop off applications here)**

99 Kings Highway  
Dover, DE 19901  
Phone: 302-739-4271

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



## Appendix A - MINIMUM MANDATORY SUBMISSION REQUIREMENTS

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

1. Transmittal Letter as specified on page 1 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The remaining vendor proposal package shall identify how the vendor proposes meeting the contract requirements and shall include pricing. Vendors are encouraged to review the Evaluation criteria identified to see how the proposals will be scored and verify that the response has sufficient documentation to support each criteria listed.
3. Pricing as identified in the solicitation
4. One (1) complete, signed copy of the non-collusion agreement (See Attachment 2)
5. One (1) completed RFP Exception form (See Attachment 3) – please check box if no information – Form must be included.
6. One (1) completed Confidentiality Form (See Attachment 4) – please check if no information is deemed confidential – Form must be included.
7. One (1) completed Business Reference form (See Attachment 5) – please provide references other than State of Delaware contacts – Form must be included.
8. One (1) complete and signed copy of the Subcontractor Information Form (See Attachment 6) for each subcontractor – only provide if applicable.
9. One (1) complete OSD application (See link on Attachment 9) – only provide if applicable
10. One (1) copy of all Qualified Provider Letter(s) issued to the Vendor by the Division of Developmental Disabilities Services Provider Authorization Committee.
11. One (1) completed and signed Appendix C – Supplemental Questionnaire.
12. One (1) valid Delaware Business License or IRS 501c3 letter
13. One (1) Certificate of Insurance that meets all coverage requirements identified on pages 25-26 of this RFP

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

Vendors shall provide proposal packages in the following formats:



1. Proposals shall be submitted online at <https://dhss.bonfirehub.com/>

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## Appendix B – Home and Community Based Service

### Descriptions for Individuals with Intellectual and Developmental Disabilities

#### Assistive Technology Service Description

Assistive technology means an item, piece of equipment, or product system, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities of service recipients. Assistive technology service means a service that directly assists a service recipient in the selection, acquisition, or use of an assistive technology device. Assistive technology includes:

1. Evaluation of the assistive technology needs of a service recipient, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the service recipient in the customary environment of the service recipient.
2. Services consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for service recipient.
3. Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
4. Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with other services in the service plan.
5. Training or technical assistance for the service recipient, or, where appropriate, the family members, guardians, advocates, or authorized representatives of the service recipient.
6. Training or technical assistance for professionals or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of service recipients.

Required Licensure: Occupational Therapists, Physical Therapist, and Speech Pathologists must be licensed by the Delaware Division of Professional Regulations under Title 24, Sections 2000, 2600 and 3700 respectfully; or, Assistive Technology Rehabilitation Engineering and Assistive Technology of North America (RESNA) certification

Delaware Administrative Code: <http://delcode.delaware.gov/>

#### Behavior Consultation Service Description



Behavior consultation is provided under the Positive Behavior Support Model. Behavior Consultation results in individually designed behavior plans and strategies for service recipients who have significant behavioral difficulties that jeopardize their ability to remain in the community due to their inappropriate responses to events in their environment. The behavior consultation is designed to:

1. Decrease challenging behaviors while increasing positive alternative behaviors, and
2. Assist service recipients in acquiring and maintaining the skills necessary to live independently in their communities and avoid institutional placement.

Behavior consultation includes a functional behavioral assessment, development of a behavior support plan, and implementation of the behavioral support plan to enable service recipients, families, and service vendors to effectively support the service recipients in their attainment of goals they have set. Vendors providing behavior consultation use an industry-standard functional behavior assessment to determine the needs of each service recipient. The service includes periodic monitoring of the effectiveness of the behavioral support plan with requisite adjustments as indicated.

Behavior consultation service may include the development of a Picture Exchange Communication System (PECS) for service recipients who experience communication challenges.

Behavior consultation service may include preparation of a package of information about a service recipient and presentation thereof to the Human Rights Committee (HRC) or Peer Review of Behavior Intervention Strategies (PROBIS).

Specifically, behavior consultation includes:

- Completing an initial functional behavioral assessment to better understand the purpose, triggers, and what is causing the maladaptive behavior.
- Developing behavior support plans incorporating the principles of positive behavior supports in order to reduce maladaptive or self-limiting behavior and increase appropriate positive behaviors. This may include the creation of a Picture Exchange Communication System (PECS).
- Providing consultation, training and direction to service recipient's support team and other direct support professionals who work with the service recipients who display challenging, maladaptive or self-limiting behaviors.
- Instructing support teams, direct support professionals and family members and others with whom the service recipients routinely interact on the principles of positive behavior support and implementation of the behavior support plan. This may include training on a Picture Exchange Communication System (PECS) when applicable.
- Monitoring the outcome of the behavior support plan through data collection and observation associated with the implementation of the behavior support plan.



- Maintaining the service recipient's record which may include the following: documentation of progress/treatment for service recipients who have behavior support plans or mental health support plans on at least a monthly basis; the creation of a quarterly report that identifies target behaviors for which data will be collected for specific types of incidents and also delineates psychiatric appointments, medication training, staff training, mental health appointments, medical issues, and at risk concerns that occurred during the quarter.

In cases where psychological or professional counselling or assessment services are indicated, upon request of the service recipient, the Behavior Consultant will:

- Identify potential mental health practitioners
- Act as a liaison between the service recipient, his/her support team and the service Vendor to ensure that the mental health practitioner receives information necessary to appropriately treat the service recipient
- Attend mental health appointments when specified in the Behavior Support Plan

In cases where psychiatric services are needed, upon request of the service recipients, the role of the Behavior Consultant is to:

- Identify potential mental health practitioners
- Act as a liaison between the service recipients, his/her support team and the service Vendor to ensure that the mental health practitioner receives information necessary to appropriately treat the person - Instruct the team on how to carry out the prescribed treatment.
- Develops behavior support plans to ensure that the service recipient is supported in accordance with the principles of best practice.
- Monitors progress/treatment for service recipients who have a behavior support plan
- Serves as a support team participant for service recipients who have a behavior support plans
- Prepares necessary documentation for oversight committees such as PROBIS and HRC in accordance with DDDS policies
- Attend mental health appointments when specified in the Behavior Support Plan

### **Benefits Counseling Service Description**

Benefits counseling provides work incentive counseling services to Pathways to Employment service recipients seeking to work while maintaining access to necessary healthcare and other benefits. Benefits counseling will provide information to service recipients regarding available benefits and assist service recipients to understand options for making an informed choice about going to work while maintaining essential benefits.



This service will assist service recipients to understand the work incentives and support programs available and the impact of work activity on those benefits. This service will assist service recipients to understand their benefits supports and how to utilize work incentives and other tools to assist them to achieve self-sufficiency through work.

This service will also include the development and maintenance of proper documentation of services, including creating benefits summaries and analyses and work incentive plans.

This service is in addition to information provided by the Aging and Disability Resource Centers (ADRC), Senior Health Insurance Program (SHIP) or other entities providing information regarding long-term services and supports.

DDDS will ensure that service recipients do not otherwise have access to this service through any other source, including Social Security Administration (SSA) and Work Incentive Planning and Assistance (WIPA).

Twenty (20) hours per year maximum for benefits counseling with exceptions possible with explicit written Departmental approval.

### **Career Exploration and Assessment Service Description**

Career exploration and assessment is a person-centered comprehensive employment planning and support service that provides assistance for service recipients to obtain, maintain, or advance in competitive employment or self-employment. It is a focused, time limited service engaging a service recipient in identifying a career direction and developing a plan for achieving competitive, integrated employment at or above the State's minimum wage. The outcome of this service is documentation of the service recipient's stated career objective and a career plan, including any necessary education and training, used to guide individual employment support.

This service may include conducting community based career assessment. The assessment may include:

- Conducting a review of the service recipient's work history, interests and skills.
- Identifying types of jobs in the community that match the service recipient's interests, abilities, and skills.
- Identifying situational assessments (including job shadowing or job tryouts) to assess the service recipient's interest and aptitude in a particular type of job.



- Developing a report that specifies recommendations regarding the service recipient's individual needs, preferences, abilities, and characteristics of an optimal work environment. The report must also specify if education, training, or skill development is necessary to achieve the service recipient's employment or career goals, with an indication of whether those elements may be addressed by other related services in the service recipient's person-centered plan or other sources.

The service also includes transportation as an integral component of the service, such as to a job shadowing opportunity, during the delivery of career exploration and assessment.

Competitive and integrated employment, including self-employment, shall be considered the first option when assisting service recipients who are of working age. Career exploration and assessment services may be authorized for up to six (6) months in a benefit year, with multi-year service utilization and reauthorization only with explicit Division approval.

### **Community Participation Service Description**

Community participation services are the provision of scheduled activities outside of a service recipient's home that support acquisition, retention, or improvement in self-care, sensory-motor development, socialization, daily living skills, communication, community living, and social skills. Community participation services include supervision, monitoring, training, education, demonstration, or support to assist with the acquisition and retention of skills and training and education in self-determination. Community participation may include self-advocacy training to assist the service recipient in expressing personal preferences, self-representation, and individual rights and to make increasingly responsible choices. Each service recipient receiving Community participation services works toward acquiring the skills to become an active member of the community. Services are furnished consistent with the service recipient's person-centered plan.

Community participation services focus on the continuation of the skills already learned in order to build natural supports in integrated settings. The service recipient is ready to interact and participate in community activities and needs the supports of staff to facilitate the relationship building between the service recipient and other non-disabled participants within the community activities. Ideally, the paid staff will fade or decrease their support as the natural supports become sufficient to support the service recipient in the integrated settings and activities.

Community participation may be furnished in the general community, or any combination of service locations, provided that the activities take place in a non-residential setting that is separate from the service recipient's private residence or other residential living arrangement. Service recipients may gather at the beginning and end of the day at a "hub" before embarking on their activities of



the day but may not spend any more than 1 hour in total at the hub per day. Other than the brief period at the beginning or end of the day, community participation cannot be delivered in a Vendor-owned or managed setting.

The Vendor must actively promote and be capable of providing opportunities for full access to participate in the greater community for those service recipients that express a desire for such access and for whom it would not be contrary to their health and safety needs as articulated in their person-centered plan. The Vendor must demonstrate that they support service recipients to exercise their option to achieve their desired level of participation in the community. To the greatest extent possible, service recipients should be exposed to a broad array of community experiences so that they can make informed choices about what they like and what they do not like.

Community participation provides community-based habilitative services for service recipients who require support to develop skills that lead to independent community navigation. Service recipients must have a desired outcome to access to the community in a meaningful way via true community integration. Paid staffing supports are required to fade as natural community supports are developed. Each service recipient receiving Community participation services works toward acquiring the skills to become an active member of their community. Community participation services are highly individualized, thus assumes a staff to client ratio of 1:1 or 1:2. Although Community Participation activities may be provided in a location that would be considered to be recreational in nature, the purpose of the environment is to provide the opportunity to acquire the identified skill.

Direct support staff providing community participation services may perform the following activities:

1. Explore/Discover service recipient interests - Community based assessments (non-employment related), informational interviews with the service recipient, family and others who know them well, administer interest inventory tools;
2. Identify community resources – Based on service recipient interests and skill sets: make cold calls, network with family and other support resources, reach out to existing community partners, attend county/community events, community mapping;
3. Maintenance of appropriate community and interpersonal behaviors - Develop and implement fading plan, maintain appropriate community behaviors, follow-up as needed with the service recipient to determine needs and offer encouragement and/or advice; and
4. Other training needs identified by assessment and by the person-centered plan. This may include some of the following: basic money management, coordinate



natural supports, the use of public transportation, on-going assessment and support in development of future community participation goals.

Community participation services shall include activities that directly relate to the service recipient's desired outcome, such as:

- Career exploration: assessing of interests through volunteer experiences, internships, etc.
- Community integration experiences to support fuller participation in community life
- Skills development and training
- Development of activities of daily living and independent living skills
- Socialization experiences and support to enhance interpersonal skills
- Pursuit of personal interests and hobbies.

Activities should be motivated by the following core principles:

- Maximum time in the community
- Deliberate and purposeful activities
- Driven by service recipient outcomes and preferences
- Supplement to employment, but not a replacement
- Use generic community resources
- Adult appropriate activities
- Focus on relationship development with community members
- Maximize community/natural supports
- Staff model interactions with individuals that foster an image of competence and promote acceptance

Community participation services promote full integration and inclusion of service recipients into mainstream society through positive community contributions and relationship development. Community participation services are not activities to "fill" the service recipient's day; it is a vehicle for service recipients to explore and engage in meaningful and purposeful activities, based on individual preferences and needs as identified in their person-centered plan. The individual's person-centered plan must include community participation as a desired service and their outcomes, goals, services and supports must be consistent with the services defined as community participation services. The service recipient's person-centered plan must include specific outcomes related to community integration.

Community participation outcomes, goals and the person-centered plan must be reviewed: no less than annually, more frequently as necessary or as requested by the service recipient. Community participation services are expected to be provided only for as long as necessary. A goal to decrease professional supports and



increase natural supports must be a standard part of every service recipient's plan. Specific fading strategies must be outlined in the person-centered plan.

Community participation services may also be used to provide supported retirement activities. As some service recipients reach retirement age, they may no longer desire to work and may need supports to assist them to engage in meaningful retirement activities in their communities. This might involve altering schedules to allow for more rest time throughout the day, support to participate in hobbies, clubs and/or other senior related activities in their communities that provide a specific beneficial outcome for the service recipient.

Community participation services take place in a non-residential setting that is separate from the service recipient's private residence or other residential living arrangement. Service recipients may gather at the beginning and the end of the service day at a "hub" before embarking on their activities of the day or returning home, but they may not spend more than one hour in total at the hub per day. Other than the brief period at the beginning and end of the day, community participation services cannot be delivered in a vendor-owned or managed setting. Agency staff may provide personal care/assistance as a component part of community participation services in order to meet the needs of a service recipient; however, personal care/assistance may not be the only service provided. Community participation is not intended to be used as supports for paid employment activities.

Community participation services may be provided outside of the "typical" daytime hours; however, for service recipients who also receive residential habilitation, supported living or any other residential "like" support service, documentation must be included as part of their person-centered plan detailing why those activities cannot be provided as part of the residential service and support activities

Transportation to and from the service location including a "hub" may be billed separately as a component part of the service for days when it is provided.

Because community participation is very individualized and is heavily focused on community exploration, it can only be provided in staffing ratios of one staff to each participant or one staff to two participants.

### **Community Transition Service Description**

Community transition services facilitate transition from an institution to a community setting, consistent with State Medicaid Director Letter 02-008, or to otherwise establish a community residence for a service recipient who has been newly



approved for residential habilitation or supported living and is moving from the family home.

Community transition will enable service recipients whose means are limited to furnish and decorate his or her bedroom in a manner of his or her choosing consistent with the Home and Community Based (HCBS) Rule and to foster independence. Community transition includes the reasonable, documented cost of one-time expenses and services necessary to occupy a domicile in the community, including:

- Essential furnishings, including: bed frame, mattress and box spring or futon, dresser, wardrobe, chair, trashcan, lamps, desk, small table/nightstand, bookcase, linens and pillows, window covering, wall decorations, mirrors
- Bath mats & shower curtain, grab bars and other freestanding implements to increase stability in the bathroom such as small appliances including blow dryer, vacuum cleaner, coffee maker, toaster and toiletries
- Kitchen items, including: hand towels, dishes, drinkware, flatware & utensils, knives, cookware, bowls and food storage
- Initial stocking of refrigerator and pantry
- Initial supply of cleaning supplies and laundry
- Initial supply of bathroom supplies
- Clothing
- Moving expenses
- Security deposits
- Set-up fees and deposits for utility access (telephone, electric, utility, cable)
- Pest eradication
- Cleaning service prior to occupancy
- Trial visits to waiver residential settings
- Lock and key

Total community transition services are limited to \$4,000 per service recipient for 10 years. Community transition services shall not include monthly rental or mortgage expenses, food (other than initial purchases to stock a kitchen), regular utility charges, and/or household appliances or items that are intended for purely recreational purposes such as televisions or DVD players. Community transition expenses must include in the service recipient's person-centered plan and must be approved by DDDS in advance. If a service recipient for whom waiver funds have been used for community transition expenses moves from one waiver-funded residential setting to another, they will be able to take any such furnishings with them to their new residence if they so choose.



Day habilitation services are the provision of regularly scheduled activities in a non-residential setting, separate from the service recipient's private residence or other residential living arrangement, such as assistance with acquisition, retention, or improvement in self-help, socialization and adaptive skills that enhance social development and develop skills in performing activities of daily living and community living, physical development, basic communication, self-care skills, domestic skills, community skills and community-inclusion activities. Activities and environments are designed to foster the acquisition of skills, building positive social behavior and interpersonal competence, greater independence and personal choice.

Day habilitation services focus on enabling the service recipient to attain or maintain his or her maximum potential and shall be coordinated with any needed therapies in the service recipient's person-centered plan, such as physical, occupational, or speech therapy.

Day habilitation services are the provision of regularly scheduled activities that may be furnished at a fixed-site facility, in the general community, or any combination of service locations, provided that the activities take place in a non-residential setting that is separate from the service recipient's private residence or other residential living arrangement.

Day habilitation facility based services are the provision of regularly scheduled activities that may be furnished at a fixed-site facility, in the general community, or any combination of service locations, provided that the activities take place in a non-residential setting that is separate from the service recipient's private residence or other residential living arrangement.

Day habilitation non-facility-based services may be furnished in the general community, or any combination of service locations, provided that the activities take place in a non-residential setting that is separate from the service recipient's private residence or other residential living arrangement. Service recipients may gather at the beginning and end of the day at a "hub" before embarking on their activities of the day but may not spend any more than one hour in total at the hub during the scheduled program delivery day. Other than the brief period at the beginning or end of the day, Day Habilitation non-facility-based services cannot be delivered in a vendor owned or managed setting.

The vendor must actively promote and be capable of providing opportunities for full access to participate in the greater community for those service recipients that express a desire for such access and for whom it would not be contrary to their health and safety needs as articulated in the person-centered plan. The Vendor must demonstrate that they support service recipients to exercise their option to achieve their desired level of participation in the community. To the greatest extent possible, service recipients should be exposed to a broad array of community experiences so that they can make informed choices about what they like and what they do not like.



Activities provided in a day habilitation program should lead to the following outcomes: obtaining and/or maintaining skills that build positive social behavior and interpersonal competence and to increase independence and personal choice.

Although day habilitation activities may be provided in a location that would be considered recreational in nature, the purpose of the environment is to provide the opportunity to acquire the identified skill.

Day habilitation services may include assistance with gaining and/or maintaining skills in the following areas:

1. Adaptive skills that enhance social development
  - Self-Care – dressing, grooming, and feeding one's self
  - Communication Skills – understanding and using verbal and nonverbal language, use of a communication device
  - Self-Direction – problem solving, exercising choice, initiating and planning activities
  - Social skills – maintaining interpersonal relationships, understanding emotions and social cues, understanding fairness and honesty, obeying rules and laws
  - Leisure skills – taking responsibility for one's own activities, having the ability to participate in the community
  - Transition to Independent Living– using public transportation, using community resources, housekeeping, cooking, doing laundry, maintaining living space, shopping
  - Functional academics – using reading, writing, and math skills in everyday life
  - Work – ability to maintain part-time or full-time employment, ability to work under supervision, cooperate with coworkers, be reliable and punctual, and meet work standards
  - Health and safety – ability to protect one's self, responding to health problems
2. Socialization
  - Providing a service recipient with the skills and opportunities necessary for participating within his or her own society
3. Activities of community living
  - Taking medications as prescribed
  - Managing money
  - Shopping for groceries or clothing
  - Use of telephone or other form of communication
  - Using technology (as applicable)
  - Transportation within the community
  - Communication management
  - Community orientation
  - Health management and maintenance
  - Meal preparation and cleanup
  - Safety procedures and emergency responses



#### 4. Activities of daily living

- Bowel and bladder management (recognizing the need to relieve oneself)
- Dressing
- Eating (including chewing and swallowing)
- Feeding (setting up food and bringing it to the mouth)
- Functional mobility (moving from one place to another while performing activities)
- Personal device care (maintenance of adaptive equipment)
- Personal hygiene and grooming (including brushing/combing/styling hair)
- Toilet hygiene

Personal care/assistance may be a component part of day habilitation services as necessary to meet the needs of a service recipient, but may not comprise the entirety of the service.

For service recipients with degenerative conditions, day habilitation may include training and supports designed to maintain skills and functioning and to prevent or slow regression, rather than acquiring new skills or improving existing skills.

Day habilitation services may also be used to provide supported retirement activities. As some service recipients get older, they may no longer desire to work and may need supports to assist them in meaningful retirement activities in their communities. This might involve altering schedules to allow for more rest time throughout the day, support to participate in hobbies, clubs and/or other senior related activities in their communities that provide a specific beneficial outcome to the recipient.

The service recipient's person-centered plan must include day habilitation as a desired service and their goals, services and supports must be consistent with the services defined as day habilitation services.

The day habilitation goals, person-centered plan must be reviewed: no less than annually, more frequently as necessary or as requested by the service recipient. These services and supports should be designed to support successful outcomes consistent with the service recipient's goals.

Meals are not provided as part of this service.

Transportation to and from the service location may be billed separately as a component part of the service for days when it is provided. Transportation may only be billed for days when transportation is actually provided.

Day habilitation services may not routinely provide for the payment of services that are vocational in nature (i.e., for the primary purpose of producing goods or performing



### Financial Coaching Plus Service Description

Financial coaching plus uses a financial coaching model to assist service recipients in establishing financial goals, creating a plan to achieve them, and providing information, support, and resources needed to implement stated goals in the financial plan. The financial coach will assist the service recipient seeking to improve his/her financial well-being in order to improve economic self-sufficiency. Financial coaching plus includes the development of a personal budget and identifies reliable and trusted savings, credit, and debt programs that promote financial stability. The content and direction of the coaching is customized to respond to the individual financial goals set by the service recipient. Financial coaching plus is provided to the service recipient one-on-one in a setting convenient for the service recipient over a time-limited series of sessions and follow-up to increase the opportunity for self-directed behavior skills learning.

The Financial Coach will:

- Assist the service recipient in developing financial strategies to reach service recipient's goals with care to ensure that personal strategies reflect considerations related to benefits, as identified through benefits counseling.
- Ensure that the service recipient understands the availability of various tax credits such as the Earned Income Tax Credit, Child Care Tax Credit, and others.
- Refer service recipients as needed to benefit counselors.
- Provide information to complement information provided through benefits counseling regarding appropriate asset building.
- Use an integrated dashboard of available community-based asset building opportunities and financial tools/services to ensure service recipients are leveraging all resources to increase economic self-sufficiency.
- Provide information about how to protect personal identify and avoid predatory lending schemes.
- Provide assistance with filing yearly taxes either through the Internal Revenue Service (IRS) Volunteer Income Tax Assistance (VITA) program or its virtual program that involves self-filing.

Financial coaching plus service limited to five (5) hours per service recipient per year.

The financial coaching plus service will include the collection and maintenance of proper documentation of services provided as required by the Division that will track goals, actions, and outcomes of individual service recipients.



The financial coaching plus service may complement information provided on the use of public benefits and/or work incentives through benefits counseling or other services.

### **Home Accessibility/Adaptations Service Description**

Home modifications include those physical adaptations to the private residence of the service recipient or the service recipient's family, required by the service recipients' personal care plan, that are necessary to ensure the health, welfare and safety of the service recipient or that enable the service recipient to function with greater independence in the home. Such modifications include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or the installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the service recipient. This includes backup power generators that are necessary to supply power to medical equipment and are determined to be medically necessary by physician's order. Modifications must comply with applicable building codes and must have building permits where required.

Excluded are those adaptations or improvements to the home that are of general utility, and are not of direct medical or remedial benefit to the service recipient. Adaptations that add to the total square footage of the home are excluded from this benefit except when necessary to complete an adaptation (e.g., in order to improve entrance/egress to a residence or to configure a bathroom to accommodate a wheelchair).

Home and vehicle modifications may not be furnished to adapt living arrangements that are owned or leased by Vendors of waiver services.

Limited to \$6,000 per service recipient every five (5) waiver demonstration years, inclusive of both services.

### **Medical Residential Habilitation Service Description**

Medical residential habilitation shall mean a type of residential service selected by the service recipient, that includes the provision of medically necessary direct skilled nursing services and habilitative services that enable a service recipient to acquire, retain, or improve skills necessary to reside in a community-based setting. This service is offered as an alternative to private duty nursing that is available under the Medicaid State Plan. In addition, Medical residential habilitation supports each service recipient's independence and full integration into the community, ensures each service recipient's choice and rights, and comports fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, including those requirements applicable to Vendor-owned or controlled homes, except as supported



by the service recipient's specific assessed need and set forth in the person-centered plan.

Medical residential habilitation must be medically necessary and provided in accordance with a physician's order and the person-centered plan. The service recipient who receives medical residential habilitation, must have a medical diagnosis and treatment needs that would justify the provision of direct skilled nursing services that must be provided directly by a registered nurse (RN) or a licensed practical nurse (LPN) operating within their scope of practice under state law. Nursing services must be needed on a daily basis and at a level which cannot, for practical purposes, be provided through pre-scheduled skilled nursing visits during the course of a day and which cannot be more cost-effectively provided through a combination of waiver services and other nursing services available under the state plan. There must be an order by a physician, physician assistant, or nurse practitioner for one or more specifically identified skilled nursing services, excluding nursing assessment or oversight, which must be provided directly by a registered nurse or licensed practical nurse under the supervision of a registered nurse operating within their scope of practice under state law.

The awarded vendor may elect to have the nurse also be responsible for the provision of non-skilled services including eating, toileting, grooming, and other activities of daily living, needed by the service recipient during the period that, medical residential habilitation services are authorized and provided, unless such assistance cannot be safely provided by the nurse while also attending to the service recipient's skilled nursing needs. However, the need for medical residential habilitation shall depend only on the skilled nursing needs of the service recipient. The awarded vendor shall be responsible for providing the level of services and supports specified in the person-centered plan, including skilled nursing services, up to 24 hours per day 7 days a week when the service recipient is not attending work or other day services, based on the individualized needs of each service recipient; however, a nurse is not required to be present in the home during those time periods when skilled nursing services are not medically necessary. One nurse can provide services to more than one person supported in the home during the same time period if it is medically appropriate to do so.

Medical residential habilitation may include medication administration and performance of other non-complex health maintenance tasks, as permitted by State law. The awarded vendor shall oversee the health care needs of the service recipient.

Required Licensure: Services can only be provided by a registered nurse (RN) or an advanced practice registered nurse (APRN) who is professional licensed by the State of Delaware to provide nursing services as prescribed in Delaware Code, Title 24, Chapter 19, Section 1910.

Delaware Administrative Code: <http://delcode.delaware.gov/>



### **Nurse Consultation Service Description**

Nurse consultation consists of the overall coordination and monitoring of the health care needs for service recipients. These service recipients live in community settings and have a prescribed medical treatment plan. This consultation assists caregivers in carrying out individual treatment/support plans and is necessary to improve the service recipient's independence and inclusion in their community. This service may be delivered in the service recipient's place of residence or in another community setting as described in the service plan.

Nurse consultation consists of the following activities:

- Provides the clinical and technical guidance necessary to support the service recipient in managing his/her healthcare needs.
- Completes the nursing assessment, develops an integrated medical plan of care and monitors the effectiveness of the interventions on no less frequent than an annual basis.
- Completes the required DDDS medical alert forms such as the Fall Risk Assessment, Aspiration Assessment, and other assessments as appropriate on no less frequent than an annual basis.
- Completes medication/record reviews for neighborhood homes and community living arrangements (e.g. the monthly Health and Medication Review as outlined in all applicable DDDS policies and procedures.) Findings of all reviews shall be recorded in the electronic case record and any adverse findings must be reported as a critical incident for follow up and possible corrective action.
- Completes monthly contacts (by phone or in person) and at least an annual on-site visit for Shared Living Vendors. During the on-site visit, the nurse will verify that medication storage follows the DDDS guidelines.
- Completes quarterly nursing reviews for service recipients residing with Shared Living Vendors.
- Monitors, reviews, and reconciles medication forms monthly and takes appropriate action as indicated for service recipients residing with Shared Living Vendors.
- In emergency situations, may perform a medical procedure within the registered nurse's scope of practice, experience and proficiency.
- Participates as an interdisciplinary team member.
- Attends the annual person-centered plan meetings and other meetings as appropriate.
- Provides ongoing health related training for service recipients, direct support professionals and families.
- Maintains on-going accurate, timely, and relevant documentation of all health care issues. Updates all required documents as changes in health conditions warrant.



- Communicates to service recipients/families/guardians/other service Vendors about health care issues.
- Attends medical appointments with the service recipient if indicated/warranted.
- Assists in obtaining resources and acts as an advocate and coordinator of health care services ensuring appropriate treatment, follow-up and resolution to healthcare issues occur.
- Assists service recipients to transition from one residential living arrangement to another.
- Adheres to DDDS healthcare protocols.
- Monitors medication administration activities performed by direct care staff or service recipients and may provide consultation to a direct support professional regarding medication administration in specific situations where nursing expertise is required under the Nurse Practice Act.

Required Licensure: Services can only be provided by a registered nurse (RN) who is licensed by the State of Delaware to provide nursing services as prescribed in Delaware Code, Title 24, Chapter 19, Section 1910.

Delaware Administrative Code: <http://delcode.delaware.gov/>

### **Orientation and Mobility Service Description**

Orientation and mobility provide service recipients training to develop the necessary skills to travel independently and safely. This is accomplished one on one with the usage of white canes, guide dogs, or other equipment. Orientation and mobility instruction is a sequential process where visually impaired service recipients are taught to utilize their remaining senses to determine their position within their environment and to negotiate safe movement from one place to another.

Items designed for general use shall only be covered to the extent necessary to meet the service recipient's assessed needs and are primarily used by a service recipient to address a therapeutic purpose.

### **Personal Care Service Description**

Personal care service can be a range of assistance to enable service recipients to accomplish tasks that they would normally do for themselves if they did not have a disability. This assistance may take the form of hands-on assistance (performing a task for the service recipient) or cuing to prompt the service recipient to perform a task. Personal care services may be provided on an episodic or on a continuing basis. Health-related services that are provided may include skilled or nursing care and medication administration to the extent permitted by State law.



Personal care includes the provision of a range of services for service recipients who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community. Personal care can be provided in the service recipient's residence (family home, own home or apartment), with or without family caregivers present, or in community settings and may not supplant other Waiver or state plan covered services (i.e., day habilitation, prevocational service, community participation, individual supported employment, group supported employment or supported living).

Personal care can include assistance, support and/or training in activities such as meal preparation; laundry; routine household care and maintenance; activities of daily living such as bathing, eating, dressing, personal hygiene; shopping and money management; reminding/observing/monitoring of medications; supervision; socialization and relationship building; transportation; leisure choice and participation in regular community activities; attendance at medical appointments.

The total expense for personal care and respite services, combined, is limited to \$2,700 per service recipient per waiver demonstration year. Personal care cannot be provided to service recipients who receive residential habilitation in a vendor-managed setting. If a service recipient enrolls for less than an entire demonstration year, the annual limit will be prorated by the number of months remaining in the demonstration year.

Required Licensure: Personal Attendant Service Agency (PASA) Personal Care Vendors require license from the Delaware Division of Health Care Quality per Delaware Administrative Code Title 16, Section 4469 Personal Assistance Service Agency. Home Health Personal Care Vendors require license from the Delaware Division of Health Care Quality per Delaware Administrative Code, Title 16, Section 4410 Skilled Home Health and/or 4406 Health Agency-Aide Only.

Delaware Administrative Code: <http://delcode.delaware.gov/>

### **Prevocational Service Description**

Per Delaware's Employment First Law, H.B. 319, signed into law in July 2012, and in accordance with other federal guidelines governing employment for service recipients with disabilities, agencies that provide services to service recipients with disabilities are required to consider competitive and integrated employment, including self-employment, as the first option when serving service recipients with disabilities who are of working age.

Prevocational services provide learning and work experiences, including volunteer work and/or internships, where the service recipient can develop general, non-job-



task-specific strengths and skills that contribute to employability in paid employment in integrated community settings. Services are expected to produce specific outcomes to be achieved, as determined by the service recipient and his/her services and supports planning team through an ongoing person-centered planning process evaluated annually.

Initial referrals for prevocational services must also include a referral to the Division of Vocational Rehabilitation in order to determine eligibility for vocational rehabilitation services and to arrange for formal community-based employment assessment. The results of the initial community-based employment assessment must support the outcome of integrated, competitive employment and include specific strategies to be achieved by participating in prevocational services that will ultimately enable the service recipient to obtain integrated, competitive employment.

Service recipients must, at minimum, be assessed annually for the continued need for prevocational services in order to continue to be eligible for prevocational services. Reviewing service recipient progress toward the previously identified specific strategies shall be included as part of the annual assessment. Service recipients receiving prevocational services must have employment-related outcomes in their person-centered plan; the general habilitation strategies must be designed to support such employment outcomes. Service recipients will be eligible for and can choose to participate in prevocational services while engaging in job development or job search activities in order to expand employability skills.

The optimal outcome for prevocational services is competitive, integrated employment in the community for which a service recipient is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the vendor for the same or similar work performed by individuals without disabilities.

Prevocational services should enable each service recipient to attain the highest level of work in the most integrated setting and with the job matched to the service recipient's interests, strengths, priorities, abilities, and capabilities, while following applicable federal wage guidelines. Services are intended to develop and teach general skills; Examples include, but are not limited to: ability to communicate effectively with supervisors, co-workers and customers; generally accepted community workplace conduct and dress; ability to follow directions; ability to attend to tasks; workplace problem solving skills and strategies; general workplace safety and mobility training.

Prevocational facility based services are the provision of regularly scheduled employment related activities that may be furnished at a fixed-site facility, in the general community, or any combination of service locations, provided that the activities take place in a non-residential setting separate from the service recipient's private residence or other residential living arrangement.



Prevocational non-facility-based services may be furnished in the general community, or any combination of service locations, provided that the activities take place in a non-residential setting that is separate from the service recipient's private residence or other residential living arrangement. Service recipients may gather at the beginning and end of the day at a "hub" before embarking on their employment related activities for the day but may not spend any more than 1 hour in total at the hub during the scheduled program delivery day. Other than the brief period at the beginning or end of day, Prevocational non-facility-based services cannot be delivered in a Vendor owned or managed setting.

The Vendor must actively promote and be capable of providing opportunities for full access to participate in the greater community for those service recipients that express a desire for such access and for whom it would not be contrary to the health and safety needs as articulated in their person-centered plan. The Vendor must demonstrate that they support service recipients to exercise their option to achieve their desired level of participation in the community. To the greatest extent possible, service recipients should be exposed to a broad array of community experiences that they can make informed choices about what they like and what they do not like.

Prevocational services are learning and work experiences, including volunteer work that assist the service recipient to develop general, non-job-task-specific strengths and skills (soft skills) that contribute to employability related to the service recipient's identified employment goal. The outcome of this service is competitive, integrated employment in the community matched to the serviced recipient's interests, strengths, priorities, abilities, and capabilities.

Prevocational services may include activities that assist the service recipient to improve their:

- Ability to communicate effectively with supervisors, co-workers, and customers
- Ability to display generally accepted community workplace conduct and dress
- Ability to follow directions
- Ability to attend to tasks
- Workplace problem solving, skills and strategies
- General workplace safety
- Mobility training

Clear distinction must be made between prevocational services and vocational services. Prevocational services focus on teaching general skills (soft skills) that contribute to the service recipient's employability, and vocational services are services that teach job task specific skills.

Prevocational services are expected to occur over a defined period of time with specific employment outcomes to be achieved, as determined by the service recipient and his/her service and supports planning team through an ongoing person-centered planning process.



Service recipients receiving Prevocational services must have employment related goals in their person-centered plan, and the prevocational activities must be designed to support such employment goals.

Personal care/assistance may be a component part of prevocational services as necessary to meet the needs of a service recipient, but may not comprise the entirety of the service.

A service recipient receiving prevocational services may pursue employment opportunities at any time to enter the general work force. Prevocational services are intended to assist service recipient to enter the general workforce. Prevocational services may include volunteer work, such as learning and training activities that prepare a person for entry into the paid workforce.

Participation in prevocational services is not a pre-requisite for individual or small group supported employment services; Service recipients may choose to go directly into supported employment in lieu of prevocational services.

The service recipient's person-centered plan must include prevocational services as a desired service and their goals, services and supports must be consistent with the services defined as prevocational services. Prevocational service goals and person-centered plan must be reviewed: no less than annually, more frequently as necessary or as requested by the service recipient. These services and supports should be designed to support successful employment outcomes consistent with the service recipient's goals.

Meals are not provided as part of this service.

Transportation to and from the service location may be billed separately as a component part of the service for days when it is provided.

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| <b>Residential Habilitation Service Description</b> |
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| <b>Neighborhood Group Home or Community Living Arrangement</b> |
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Residential habilitation may be provided in a vendor-managed setting such as a neighborhood group home or a supervised or staffed apartment (community living arrangement).

Residential habilitation may be available to service recipients whose health and safety conditions pose a serious at risk immediate harm, or death to the service recipient or others, who are the victims of abuse or neglect, or who have experienced the loss of a caregiver or a change in the caregiver's status that prevents them from meeting the needs of the service recipients and that puts them at risk of homelessness. The need for residential habilitation must be demonstrated, documented and prioritized using a



standardized assessment tool administered by the state. Residential habilitation must be provided in the most integrated setting to meet the service recipient's needs.

Awarded vendors must actively promote and be capable of providing opportunities for full access to participate in the greater community for those service recipients that express a desire for such access and for whom it would not be contrary to their health and safety needs as articulated in their person-centered plan. Awarded vendors must demonstrate that they support service recipients to exercise their option to achieve their desired level of participation in the community. To the greatest extent possible, service recipients should be exposed to a broad array of community experiences so that they can make informed choices about what they like and what they do not like.

Residential habilitation services can include assistance with acquisition, retention, or improvement in skills related to activities of daily living, such as personal grooming and cleanliness, bed making and household chores, eating and the preparation of food, and the social and adaptive skills necessary to enable the individual to reside in a non-institutional community-based setting. These services are individually planned and coordinated through the service recipient's person-centered plan. The amount, duration, frequency and scope of these services are based on the service recipient's need.

The following activities may be performed under all types of residential habilitation:

- Self-advocacy training that may include training to assist in expressing personal preferences, self-representation, individual rights and to make increasingly responsible choices.
- Independent living training may include personal care, household services, child and infant care (for parents themselves who are developmentally disabled), and communication skills such as using the telephone.
- Cognitive services may include training involving money management and personal finances, planning and decision making.
- Implementation and follow-up counseling, behavioral or other therapeutic interventions by residential staff, under the direction of a professional, that are aimed at increasing the overall effective functioning of a service recipient.
- Emergency preparedness.
- Community access and inclusion services that explore community services available to all people, natural supports available to the service recipient, and develop methods to access additional services/supports/activities desired by the service recipient.
- Supervision services may include a person safeguarding a service recipient with developmental disabilities and/or utilizing technology for the same purpose.

**Required Licensure:** Vendors who operate homes that host more than one HCBS waiver participant must be licensed under Delaware Administrative Code, Title 16, Section 3315 Residential (Family) Care Homes. Vendors who operate neighborhood group homes physically located in Delaware must meet all Delaware regulations for Neighborhood Homes for Persons with Developmental Disabilities in accordance with



16 Delaware Code, Chapter 11. Vendors who operate homes in another state must be licensed or certified by the state agency(ies) designed to perform that function in each state

Delaware Administrative Code: <http://delcode.delaware.gov/>.

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| <b>Residential Habilitation Service Description</b> |
| <b>Provider Type: Shared Living Agency</b>          |

Services provided under a shared living arrangement include personal care and supportive services (e.g., homemaker, chore, attendant care, companion, medication oversight (to the extent permitted under State law)) provided in a DDDS-certified private host home by a principal care provider who lives in the home or a Shared Living Agency, which is responsible for recruiting and certifying each host home using the DDDS Standards. A Shared Living arrangement is furnished to adults who receive these services in conjunction with residing in the home. DDDS prefers one-person Shared Living homes but allows for exceptions to the one-person rule for married couples or the preference of the individual, including siblings or friends who desire to live in the same home. Exceptions may be granted for the maximum number of 3. Separate payment is not made for homemaker or chore services furnished to a participant receiving shared living arrangement services, since these services are integral to and inherent in the provision of shared living arrangement services.

The Shared Living Agency must verify the licensure of any host home nurse authorized to provide Medical Residential Habilitation as a registered nurse (RN) or advance practice registered nurse (APRN). The host home must have a professional license from the State of Delaware to provide nursing services as prescribed in Delaware Code, Title 24, Chapter 19, Sections 1910 and 1914.

The Shared Living Agency must verify that host homes that are authorized to provide direct support to deaf service recipients must be American Sign Language (ASL) certified or demonstrate ASL fluency in order for the state to provide a higher reimbursement to the provider related to the use of ASL.

Shared Living Agency providers must meet the DDDS Standards for Shared Living Agencies providing Residential Habilitation in a host home setting as specified in the DDDS Provider Standards for Home and Community Based Services.



The Shared Living Agency must ensure that each host home meets the Division of Developmental Disabilities standards for Residential Habilitation, Shared Living, before the host home can accept a waiver member.

All DDDS waiver providers must agree to accept the terms and conditions under the Medicaid provider contract as a condition of enrollment to provide services under the waiver. The Shared Living Agency must have a written agreement with each host home that states the expectations and standards for being a host home for a person with an intellectual disability.

The Shared Living Agency is responsible for ensuring that licensed host home nurses providing Medical Residential Habilitation in a shared living setting demonstrate the ability to work with individuals with Developmental and Intellectual Disabilities with a wide range in the intensity of support needs including cognitive impairments, autism, mobility, dual diagnosis (Developmental and Intellectual Disability and Mental Health support needs), or who have more significant health related challenges by meeting specified DDDS training requirements.

### **Respite Service Description**

Respite services may be provided to service recipients unable to care for themselves that are furnished on a short-term basis because of the absence or need for relief of those persons who normally provide care to the service recipient. Respite may be delivered in the service recipient's residence (family home, own home or apartment) or in community settings and may not supplant other waiver or state plan covered services.

Out-of-home respite includes services provided to service recipients unable to care for themselves and is furnished on a short-term basis because of the absence of relief of those persons who would normally support the service recipient. Out-of-home respite may be planned or may be used for service recipients who are experiencing a short-term crisis. Out-of-home respite may be provided on the same day that a service recipient also receives a day service. However, payment will not be made for Respite provided at the same time when other services that include care and supervision are provided.

Out-of-home respite can be provided in the following settings:

- Medicaid-certified public ICF-IID
- Licensed neighborhood group home
- DDDS-credentialed community living arrangement
- Overnight camp
- Shared living arrangement
- Other emergency temporary living arrangement that meets DDDS standards.



Respite is not available to service recipients receiving residential habilitation in a neighborhood group home or community living arrangement.

For respite service that is provided in a licensed group home, community living arrangement, or shared living arrangement, the State will ensure that the needs and best interest of the other residents in the home are taken into account and they agree to the proposed arrangement before authorizing the setting for the purpose of a respite service. Prior-approval is required by the DDDS Director of Community Services or designee for a service recipient living in the family home to access respite services in a group home or community living arrangement.

The total payment for respite and personal care services, combined, is limited to \$2,700 per service recipient per waiver demonstration year. Respite cannot be provided to service recipients who receive residential habilitation in a vendor-managed setting. If a service recipient is enrolled for less than an entire demonstration year, the annual limit will be prorated by the number of months remaining in the demonstration year.

Required Licensure: ICF/IDD Respite Vendors must be licensed by the Delaware Division of Health Care Quality as a Nursing Facility. Personal Attendant Service Agency (PASA) Respite Vendors require license from the Delaware Division of Health Care Quality per Delaware Administrative Code Title 16, Section 4469 Personal Assistance Service Agency. Home Health Respite Vendors require license from the Delaware Division of Health Care Quality per Delaware Administrative Code, Title 16, Section 4410 Skilled Home Health and/or 4406 Health Agency-Aide Only.

Delaware Administrative Code: <http://delcode.delaware.gov/>

### **Specialized Medical Equipment and Supplies**

Specialized medical equipment and supplies include:

1. Devices, controls, or appliances, specified in the person-centered plan, that enable service recipients to increase their ability to perform activities of daily living.
2. Devices, controls, or appliances that enable the service recipient to perceive, control, or communicate with the environment in which they live.
3. Items necessary for life support, or to address physical conditions, along with ancillary supplies and equipment necessary for the proper functioning of such items.



4. Other durable and non-durable medical equipment not available under the State Plan that is necessary to address participant functional limitations;
5. Necessary medical supplies not available under the State Plan. Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the State Plan and exclude those items that are not of direct medical or remedial benefit to the service recipient.

All items shall meet applicable standards of manufacture, design and installation.

### **Supported Employment (Individual) Service Description**

Individual supported employment services are provided to service recipients, at a one to one staff to consumer ratio. Because of their disabilities, there is a need for ongoing support to obtain and maintain an individual job in competitive or customized employment or self-employment position, in an integrated work setting in the general workforce for which a service recipient is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. The outcome of this service is sustained paid employment at or above the minimum wage in an integrated setting in the general workforce, in a job that meets personal and career goals in order to promote community inclusion.

Supported individual employment may also include support to establish or maintain self-employment, including home-based self-employment. Supported individual employment services are individualized and may include any combination of the following services: vocational/job-related discovery or assessment, person-centered employment planning, job placement, job development negotiation with prospective employers, job analysis, job carving, training and systematic instruction, job coaching, on the job employment supports, social skills training, benefits support, training and planning, transportation, asset development and career advancement services, implementation of assistive technology, and other workforce support services including services not specifically related to job skill training that enable the service recipient to be successful in integrating into the job setting.

Individual supported employment services are activities provided to service recipients who because of their disabilities need ongoing support in order to obtain or maintain employment. Individual supported employment is defined as an individual job, in an integrated work setting, in the general workforce for which the service recipient is compensated at or above the minimum wage. Individual supported employment assumes a staff to client ratio of 1:1; therefore, the service recipient being supported must not be part of a team, crew or group of others with disabilities. Clarification must be made when a service recipient works at a business or company while others with



disabilities are also working at the same business or company, at the same time. The distinction must be made to determine whether or not each service recipient has an “individual” job. Services and supports must be provided by a job coach/employment specialist.

Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA (20 U.S.C. 1401 et seq.) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or payments that are passed through to users of supported employment services.

Individual supported employment services may include the following activities: (Provided the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.)

Rehabilitation Act of 1973:

- Vocational/job-related discovery or assessment
- Person-centered employment planning
- Job placement
- Job development negotiation with prospective employers
- Job analysis
- Job carving
- Training and systematic instruction
- Job coaching
- Benefits support
- Transportation
- Asset development and career advancement services
- Support to establish or maintain self-employment, including home-based self-employment
- Implementation of assistive technology
- Implementation of other workforce support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

All service recipients expressing an interest in employment must be referred to the Division of Vocational Rehabilitation to be assessed for eligibility.

In addition to the need for an appropriate job match, that meets the service recipient's skills and interests, service recipients with the most significant disabilities may need long-term employment support to successfully maintain a job due to the ongoing nature



of the service recipient's support needs, changes in life situations, or evolving and changing job responsibilities.

The service recipient's person-centered plan must include individual supported employment as a desired service and their employment goals, services and supports must be consistent with services defined as individual supported employment.

The employment goals and person-centered plan must be reviewed: no less than annually, more frequently as necessary or as requested by the service recipient. These services and supports should be designed to support successful employment outcomes consistent with the service recipient's goals.

Individual supported employment activities do not include volunteer work. Individual supported employment activities do not include payment for routine supervision, training, support and adaptations typically available to other workers without disabilities filling similar positions in the business.

Benefits support are activities that assist the service recipient in maintaining their Medicaid eligibility and/or SSI benefits. Benefits support is not benefits counseling.

Transportation includes staff time to transport service recipients to and/or from their work location; however, all other means of transportation must be explored and documented as having been explored, but determined to be unsuccessful prior to providing this support.

If transportation support is to be provided, it must be described in the service recipient's person-centered plan and goals must be included to assist the service recipient to become more independent and access a more integrated form of transportation.

Individual supported employment services may be provided by a co-worker or other job site personnel provided that the services that are furnished are not part of the normal duties of the co-worker, supervisor or other personnel and these service recipients meet the pertinent qualifications for the vendors who provide this service.

Personal care/assistance may be a component part of individual supported employment services, but may not comprise the entirety of service.

Individual supported employment services may include services and supports that assist the service recipient in achieving self-employment through the operation of a business; however, Medicaid funds may not be used to defray the expenses associated with starting up or operating a business. Assistance for self-employment may include:

- Aid to the service recipient in identifying potential business opportunities;
- Assistance in the development of a business plan, including potential sources of business financing and other assistance in including potential sources of business financing and other assistance in developing and launching a business;



- Identification of the supports that are necessary in order for the service recipient to operate the business; and
- Ongoing assistance, counseling and guidance once the business has been launched.

Service recipients receiving individual supported employment services may also receive other day services. A service recipient's person-centered plan may include two or more types of day services; however, different types of day services may not be billed for the same part of the day.

Individual supported employment services are expected to be provided only for as long as necessary. A goal to decrease professional supports and increase natural supports must be a standard part of every service recipient's plan.

DDDS will only refer service recipients funded by the Pathways to Employment program to Individual Supported Employment Vendors who have a contract with the Delaware Division of Vocational Rehabilitation (DVR) for Job Development, Placement and Retention Services.

**Supported Employment (Small Group) Service Description**

Small group supported employment supports are services and training activities provided in regular, business, industry, and community settings for groups of two (2) to eight (8) workers with disabilities. (For Pathways service recipients, groups are limited to no more than four (4) workers). Examples include mobile crews and other employment work groups.

Small group employment support must be provided in a manner that promotes integration into the workplace and interaction between service recipients and people without disabilities in those workplaces. Service recipients must be compensated at or above the minimum wage. The outcome of this service must be sustained paid employment and work experience leading to further career development and individual integrated community based employment for which a service recipient is compensated, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

Supported employment small group employment supports may be a combination of the following services: vocation/job related discover or assessment, person center employment planning, job placement, job development, social skills training, negotiation with prospective employers, job analysis, training and systematic instruction, job coaching, benefits supports, training and planning, transportation and career advancement services. Other workplace support services may include services



not specifically related to job skill training that enable the service recipient to be successful in integrating in to the job setting.

Transportation between the service recipient's place of residence and the employment site is a component part of small group supported employment services and the cost of this transportation is included in the rate paid to the awarded vendors but may not compromise the entirety of the service.

The awarded vendor must actively promote and be capable of providing opportunities for full access to participate in the greater community for those service recipients that express a desire for such access and for whom it would not be contrary to their health and safety needs as articulated in their personal-centered plan. The awarded vendor must demonstrate that they support service recipients to exercise their option to achieve their desired level of participation in the community. To the greatest extent possibly, service recipients should be exposed to a broad array of community experiences so that they can make informed choices about they like and what they do not like.

Documentation is maintained that the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or IDEA (20 U.S.C. 1401 et seq.) Federal financial participation is not claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer to encourage or subsidize the employer's participation in supported employment; or payments that are passed through to users of supported employment services.

Small group supported employment services may include the following activities: *(Provided the service is not available under a program funded under section 110 of the Rehabilitation Act of 1973 or the IDEA (20 U.S.C. 1401 et seq.)*

- Vocational/job-related discovery or assessment
- Person-centered employment planning
- Job placement
- Job development negotiation with prospective employers
- Job analysis
- Job carving
- Training and systematic instruction
- Job coaching
- Benefits support
- Transportation
- Asset development and career advancement services
- Support to establish or maintain self-employment, including home-based self-employment
- Implementation of assistive technology



- Implementation of other workforce support services including services not specifically related to job skill training that enable the waiver participant to be successful in integrating into the job setting.

All service recipients expressing an interest in employment must be referred to the Division of Vocational Rehabilitation to be assessed for eligibility.

Small group supported employment support does not include vocational services provided in facility-based work settings or other similar type of vocational services furnished in specialized facilities that are not part of general community workplaces.

Small group supported employment activities do not include volunteer work. Small group supported employment activities do not include payment for routine supervision, training, support and adaptations typically available to other workers without disabilities filling similar positions in the business.

Small group supported employment activities may be provided by a co-worker or other job site personnel provided that the services that are furnished are not part of the normal duties of the co-worker, supervisor or other personnel and these service recipients meet the pertinent qualifications for the awarded vendors for this service.

Personal care/assistance may be a component part of small group supported employment services, but may not comprise the entirety of service.

Service recipients receiving small group supported employment services may also receive other day services. A service recipient's person-centered plan may include two or more types of day services; however, different types of day services may not be billed for the same part of the day

Small group supported employment services are expected to be provided only for as long as necessary. A goal to obtain service recipient competitive employment, decrease professional supports, and increase natural supports must be a standard part of every service recipient's person-centered plan.

Benefits support are activities that assist the service recipient in maintaining their Medicaid eligibility and/or SSI benefits. Benefits support is not benefits counseling.

Transportation between the participant's place of residence and the employment site is a component part of individual supported employment services and the cost of this transportation is included in the rate paid to providers of individual supported employment but may not compromise the entirety of the service.



If transportation support is to be provided, it must be described in the service recipient's person-centered plan and goals must be included to assist the service recipient to become more independent and access a more integrated form of transportation. The service recipient's person-centered plan must include small group supported employment as a desired service and their employment goals, services and supports must be consistent with services defined as small group supported employment.

The employment goals and person-centered plan must be reviewed: no less than annually, more frequently as necessary or as requested by the service recipient. These services and supports should be designed to support successful employment outcomes consistent with the service recipient's goals.

DDDS will only refer service recipients funded by the Pathways to Employment program to Group Supported Employment Vendors who have a contract with the Delaware Division of Vocational Rehabilitation (DVR) for Job Development, Placement and Retention Services.

For individuals receiving this service under the Pathways to Employment Program: Continuation of small group supported employment requires a review and reauthorization every six (6) months in accordance with Division requirements, and shall not exceed (12) continuous months without exploration of alternative services. The review and reauthorization should verify that there have been appropriate attempts to prepare the service recipient for a transition to individualized employment support services (IESS) and that the service is recipient continues to prefer small group supported employment, despite these attempts.

Job placement support provided as a component of this service is time-limited, requiring re-authorization every 90 days, up to six (6) months in a benefit year. At each 90-day interval, the person-centered plan team will meet to clarify goals and expectations and review the job placement strategy.

**Supported Living Service Description**

Supported living is support that is very individualized and is provided in a non-Vendor managed residence that is owned or leased by the service recipient. The amount and type of supports provided are dependent upon what the service recipient needs to live successfully in the community and must be described in their person-centered plan but cannot exceed 40 hours per week for each service recipient. Daily hours of support may vary based on the needs of the service recipient. Supported living encourages maximum physical integration into the community and is designed to assist the service recipient in reaching his or her life goals in a community setting.



The types of supports provided in these settings are tailored supports that provide assistance with acquisition, retention, or improvement in skills related but not limited to:

- Activities of daily living, such as personal grooming and cleanliness, domestic chores, or meal preparation, including planning, shopping, cooking, and storage activities
- Social and adaptive skills necessary for participating in community life, such as building and maintaining interpersonal relationships, including a circle of support.
- Locating and scheduling appropriate medical services;
- Instrumental activities of daily living such as learning how to maintain a bank account, conducting banking transactions, managing personal finances in general.
- Learning how to use mass transportation.
- Learning how to select a housemate.
- Learning how to acquire and care for a pet.
- Learning how to shop.
- Facilitating connections to community-based activities

The service recipient may want to learn a new skill or may have some proficiency in certain parts of a skill but want to learn how to complete the entire task independently. Supported living includes natural supports, self-advocacy training to assist the service recipient in expressing personal preferences, self-representation, and individual rights and to make increasingly responsible choices.

Supported living must be provided based on the individualized needs of each service recipient and at naturally occurring times for the activity, such as banking and those related to personal care.

The maximum number of hours of support that can be provided to each service recipient is 40 hours per week. Exceptions may be granted by DDDS authorized personnel with documented justification related to the health and safety needs of the service recipient as documented in the person-centered plan.

Supported living is provided on a one-on-one basis. If services are provided with two or more service recipients present, the amount of time billed must be prorated based on the number of service recipients receiving the service. Payments for supported living do not include room and board.

**Vehicle Accessibility/Adaptations Service Description**



Vehicle adaptations are specified by the service recipient's personal-centered plan as necessary to enable the service recipient to integrate more fully into the community and to ensure the health, welfare and safety of the service recipient. They include adaptations or alterations to an automobile or van that is one of the waiver service recipient's primary means of transportation in order to accommodate the special needs of the service recipient.

The following items are specifically excluded:

1. Adaptations or improvements to the vehicle that are of general utility, and are not of direct medical or remedial benefit to the service recipient.
2. Purchase or lease of a vehicle.
3. Regularly scheduled upkeep and maintenance of a vehicle except upkeep and maintenance of the modifications.

Adaptations or alterations to an automobile or van that is the service recipient's primary means of transportation in order to accommodate the special needs of the service recipient.

Home and vehicle modifications may not be furnished to adapt living arrangements that are owned or leased by Vendors of waiver services.

Limited to \$6,000 per service recipient every five (5) waiver demonstration years, inclusive of both services.



## Appendix C Supplemental Questionnaire

**Vendors are required to complete Part One of this questionnaire in its entirety.**

### I. PART ONE: ORGANIZATION INFORMATION

Name of Individual/Organization: [Click here to enter name.](#)

Current Street Address: [Click here to enter address.](#)

City: [Click here to enter city.](#)

State: [Click here to enter state.](#)      Zip Code: [Click here to enter zip code.](#)

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#### Primary Contact

First Name: [Click here to enter name.](#)      Last Name: [Click here to enter name.](#)

Primary Phone Number: [Click here to enter number.](#)

Primary E-mail Address: [Click here to enter address.](#)

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#### Alternate Contact

First Name: [Click here to enter name.](#)      Last Name: [Click here to enter name.](#)

Alternate Phone Number: [Click here to enter number.](#)

Alternate E-mail Address: [Click here to enter address.](#)

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Tax ID Number: [Click here to enter number.](#)

(OR) Delaware Business License: [Click here to enter number.](#)

IRS 501(c)(3) Determination Letter (if applicable): [Click here to enter number.](#)

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Commercial General Liability Insurance Policy Number: [Click here to enter number.](#)

Automobile Liability Insurance Policy Number: [Click here to enter number.](#)

Worker's Compensation & Employer's Liability Insurance Policy #: [Click here to enter number.](#)

Umbrella/Excess Liability Insurance Policy Number: [Click here to enter number.](#)

Depending on services provided, Vendor must carry at least one of the following insurances:

Medical/Professional Liability Insurance Policy Number: [Click here to enter number.](#)

Miscellaneous Errors and Omissions Insurance Policy Number: [Click here to enter number.](#)



Product Liability Insurance Policy Number: [Click here to enter number.](#)

*\*Mandatory Requirement- Certificate(s) of Insurance for each policy in effect must accompany Supplemental Questionnaire. For Automobile Liability Insurance, declaration page listing covered vehicles is required.*

**II. PART TWO: ATTESTATION**

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I hereby certify the information provided in this supplemental questionnaire is true and complete.

Further, signature below, indicates that Vendor applying for authorization to provide home and community based services for individuals with intellectual and developmental disabilities is not excluded from participation in the Medicaid Program by the United States Office of Inspector General (OIG), Division of Health and Human Services (DHHS).

|  |   |
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| <b>PRINT VENDOR REPRESENTATIVE NAME AND TITLE:</b> | <p><a href="#">Click here to enter representative name.</a></p> <p><a href="#">Click here to enter title.</a></p> |
| <b>SIGNATURE:</b>                                  |   |



## Appendix D Frequently Asked Questions

|                          |   |
|--------------------------|---|
| <b>Section Number:</b>   | II, Scope of Services   |
| <b>Paragraph Number:</b> | 3   |
| <b>Page Number:</b>      | 3   |
| <b>Question:</b>         | <b>Do current Division of Developmental Disabilities Services (DDDS) qualified service providers need to respond to this Request for Proposals (RFP) in order to continue to provide services?</b>  |
| <b>Answer:</b>           | Only newly qualified providers of DDDS Home and Community Based Services (HCBS) must submit a proposal to this RFP in order to contract with DDDS to provide those services. ANY provider who wishes to respond to this RFP must first complete the DDDS Provider Authorization Committee process explained below, BEFORE submitting a proposal to this RFP. Currently qualified providers of DDDS HCBS that wish to add services to their approved service delivery menu must complete the DDDS Provider Authorization Committee process in order to have the new service added to their contract with DDDS. |

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| <b>Section Number:</b>   | Appendix A, Minimum Mandatory Submission Requirements  |
| <b>Paragraph Number:</b> | Entire   |
| <b>Page Number:</b>      | 53   |
| <b>Question:</b>         | <b>Do current DDDS qualified service providers need to submit all minimum mandatory submission requirements or just a copy of the signed and dated Qualified Provider letter issued by the DDDS Provider Authorization Committee?</b>  |
| <b>Answer:</b>           | All proposals to this RFP must contain <b>all</b> minimum mandatory submission requirements outlined in Appendix A, page 50 of this RFP to be evaluated and scored by the RFP Evaluation Committee. One of those requirements is the submission of the Qualified Provider letter issued by DDDS. |

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| <b>Section Number:</b>   | Appendix A   |
| <b>Paragraph Number:</b> | # 10   |
| <b>Page Number:</b>      | 53   |
| <b>Question:</b>         | <b>Please describe what the evaluation team will consider as proof of qualified provider status from</b> |



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|                | <b>DDDS? Please cite applicable sources that outline how proof of qualified DDDS provider status is obtained.</b>   |
| <b>Answer:</b> | <p>The Division of Developmental Disabilities Services (DDDS) seeks to provide a robust network of qualified providers to deliver Home and Community Based supports and services. DDDS accepts applications on an open and continuous basis as required by Medicaid regulations. Information on how to become authorized to provide HCBS services can be found at <a href="https://dhss.delaware.gov/dhss/ddds/cps.html">https://dhss.delaware.gov/dhss/ddds/cps.html</a></p> <p>Once a service provider has completed the application process and has been determined by DDDS to meet the qualification standards for one or more services, the DDDS Provider Authorization Committee issues a signed and dated letter to the provider indicating which services the provider is qualified to provide. A copy of that signed and dated letter must be submitted in any proposal to this Open and Continuous RFP as “Proof of qualified provider status from DDDS.” Only services that a provider has been qualified to provide by the Provider Authorization Committee should be included in the Appendix C - Supplemental Questionnaire found on page 82 of this RFP. If the signed and dated letter a provider has previously received from DDDS does not indicate which services the provider has been qualified to provide, the provider must request an updated letter from DDDS. Replacement and/or updated copies of qualified provider letters can be obtained by contacting the Administrative Assistant to the Provider Authorization Committee at 302-744-9600.</p> |

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| <b>Section Number:</b>   | Appendix B-Home and Community Based Service Descriptions for Individuals with Intellectual and Developmental Disabilities   |
| <b>Paragraph Number:</b> | All Service Descriptions  |
| <b>Page Number:</b>      | 54  |
| <b>Question:</b>         | <b>Several of the Service Descriptions in Appendix B do not provide details on qualifications. Please delineate the qualifications (i.e. education, certification, licensure, experience, etc.) of individuals providing each of the services listed.</b> |
| <b>Answer:</b>           | Licensure, certification, etc. required for specific services are delineated for each applicable service in   |



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|  | <p>Appendix B on pages 50-81 of the RFP. Not all services require specific licensure, certification, etc. However, all services may only be provided after qualified provider status is obtained through the DDDS Provider Authorization Committee. The Provider Authorization Committee will review and approve any required criteria for each service a potential provider applies to become qualified to provide. The DDDS Provider Authorization Committee process and the provider qualifications can be found at <a href="https://dhss.delaware.gov/dhss/ddds/cps.html">https://dhss.delaware.gov/dhss/ddds/cps.html</a></p> |
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| <b>Section Number:</b>   | II. Scope of Services  |  |
| <b>Paragraph Number:</b> | 3  |  |
| <b>Page Number:</b>      | 3  |  |
| <b>Question:</b>         | <p><b>In reference to the statement, “DDDS needs to contract with Vendors of Home and Community Based Services listed...” For each program listed, please provide the number of qualified DDDS Vendors providing this service in the State. Is there a maximum number of Vendors allowed to provide service per each service category? If so, please indicate the maximum number of Vendors per category.</b></p>  |  |
| <b>Answer:</b>           | <p>The Division of Developmental Disabilities Services (DDDS) seeks to provide a robust network of qualified providers to deliver Home and Community Based supports and services. DDDS accepts applications on an open and continuous basis as required by Medicaid regulations. There is no maximum number of vendors allowed for any HCBS service category covered under this RFP. A list of current qualified service providers can be found at <a href="https://dhss.delaware.gov/dhss/ddds/cps.html">https://dhss.delaware.gov/dhss/ddds/cps.html</a></p> |  |

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| <b>Section Number:</b>   | III, Required Information  |  |
| <b>Paragraph Number:</b> | A Minimum Requirement  |  |
| <b>Page Number:</b>      | 4  |  |
| <b>Question:</b>         | <p><b>Is there a narrative requested for the RFP proposal?</b></p>   |  |
| <b>Answer:</b>           | <p>No. All required documents for proposal submissions are outlined in Section III, page 4; Appendix A, page 50.</p> |  |



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| <b>Section Number:</b>   | Appendix A, Minimum Mandatory Submission Requirements   |  |
| <b>Paragraph Number:</b> | #9  |  |
| <b>Page Number:</b>      | 53  |  |
| <b>Question:</b>         | <b>What is the OSD application?</b>   |  |
| <b>Answer:</b>           | The Office of Supplier Diversity (OSD) questions referenced as Attachment #9 are mandatory and must be completed and submitted with all other minimum proposal submission requirements listed in Appendix A, page 49. The OSD Application is NOT a required form. It is provided for informational purposes only for organizations that are interested in submitting an application to the Office of Supplier Diversity, and it does not influence the outcome of any award decision. |  |

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| <b>Section Number:</b>   | Attachment #1  |  |
| <b>Paragraph Number:</b> | entire   |  |
| <b>Page Number:</b>      | 43   |  |
| <b>Question:</b>         | <b>Is Attachment #1 a required form that must be completed and submitted with a proposal to this RFP?</b>  |  |
| <b>Answer:</b>           | No. Attachment #1 is not listed on Appendix A, page 50 as a Minimum Mandatory Submission Requirement. Attachment #1 is the No Proposal Reply Form, and is included to be completed by potential bidders that have received notification of the RFP but DO NOT WISH TO BID. |  |

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| <b>Section Number:</b>   | Attachments #7-8  |  |
| <b>Paragraph Number:</b> | entire  |  |
| <b>Page Number:</b>      | 49-50   |  |
| <b>Question:</b>         | <b>Are Attachments #7-8 required to be completed and/or used?</b>   |  |
| <b>Answer:</b>           | No. Attachments #7-8 are not listed on Appendix A, page 49 as a Minimum Mandatory Submission Requirement. Attachments #7-8 are sample reports and included in the RFP for illustration purposes only. |  |

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| <b>Section Number:</b>   | Attachment #5, Form for Business References                                      |  |
| <b>Paragraph Number:</b> | entire   |  |
| <b>Page Number:</b>      | 47   |  |
| <b>Question:</b>         | <b>Can DDDS provide guidance on the types of acceptable business references?</b> |  |



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| <b>Answer:</b> | DDDS suggests listing business references that can appropriately attest to a provider's ability to provide HCB services. References from families of service recipients and/or individual service recipients are not preferred. Appropriate references should be able to offer information about the provider's qualifications, experience, reputation, attributes and/or financial stability. Insurance agents/carriers, contractors, landlords, etc. may all be appropriate references. |
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| <b>Section Number:</b>   | Appendix C, Supplemental Questionnaire   |  |
| <b>Paragraph Number:</b> | Part II  |  |
| <b>Page Number:</b>      | 88   |  |
| <b>Question:</b>         | <b>For currently qualified providers of multiple HCBS Lifespan Waiver and/or Pathways to Employment State Plan Amendment (SPA) services, is a separate RFP proposal required for each individual service?</b>  |  |
| <b>Answer:</b>           | No. For providers that are <u>currently</u> qualified to provide multiple services by the DDDS Provider Authorization Committee, one proposal that includes the minimum submission requirements is sufficient. Each service that a provider has been qualified to provide by the Provider Authorization Committee must be indicated in the qualified provider letter(s) included with the proposal. If the signed and dated letter(s) from DDDS do not indicate which services the provider has been qualified to provide, the provider should request an updated letter from DDDS. Replacement and/or updated copies of qualified provider letters can be obtained by contacting the Administrative Assistant to the Provider Authorization Committee at 302-744-9600 or email <a href="mailto:ddds_providerauthcommittee@delaware.gov">ddds_providerauthcommittee@delaware.gov</a> . |  |

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| <b>Section Number:</b>   | IV, Professional Services RFP Administrative Information, sub-section B. RFP Submissions   |  |
| <b>Paragraph Number:</b> | 12.a.  |  |
| <b>Page Number:</b>      | 11-12  |  |
| <b>Question:</b>         | <b>Is there only one (1) primary vendor for all services or one (1) primary vendor per service?</b>  |  |
| <b>Answer:</b>           | No. This paragraph and sub-paragraph apply to "Multi-Vendor Solutions (Joint Ventures)" and only apply if the RFP proposal is a multi-vendor solution. This is referring |  |



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|  | <p>to a vendor who sub-contracts portions of the scope of work to other vendors. The “primary vendor” is the vendor that holds the contract and is responsible for performance under the contract, and therefore responsible for all sub-contractors’ quality of work.</p> <p>The Division of Developmental Disabilities Services (DDDS) seeks to provide a robust network of qualified providers to deliver Home and Community Based supports and services.</p> |
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| <b>Section Number:</b>   | V, Contract Terms and Conditions  |  |
| <b>Paragraph Number:</b> | C.1, General Information  |  |
| <b>Page Number:</b>      | 19  |  |
| <b>Question:</b>         | <b>How often does a provider have to submit proposals to this RFP to continue to contract each fiscal year with DDDS?</b>   |  |
| <b>Answer:</b>           | DDDS will award a one-year contract with four one-year extension opportunities (for a potential total of 5 years) with providers who have submitted successful proposals to this Open and Continuous RFP. |  |

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| <b>Section Number:</b>   | III, Required Information  |  |
| <b>Paragraph Number:</b> | A.1. Minimum Requirements  |  |
| <b>Page Number:</b>      | 4  |  |
| <b>Question:</b>         | <b>Is an IRS 501c3 Determination Letter required?</b>  |  |
| <b>Answer:</b>           | Providers must submit <u>either</u> a Delaware business license <u>or</u> an IRS 501c3 Determination Letter. Any licenses or certifications required in order to perform services for which the provider has been qualified by DDDS and wishes to continue to provide must be submitted in the RFP proposal. |  |

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| <b>Section Number:</b>   | IV, Professional Services RFP Administrative Information   |  |
| <b>Paragraph Number:</b> | A.1. Public Notice   |  |
| <b>Page Number:</b>      | 5  |  |
| <b>Question:</b>         | <b>Are providers required to post a public notice of intent to submit a proposal to the RFP?</b>     |  |
| <b>Answer:</b>           | No. The State of Delaware has posted a public notice of this RFP in accordance with 29 Del. C. 6981. |  |



## **APPENDIX E– Templates/Sample Agreements**

These **Templates/Sample Agreements** will be used to negotiate the final version of the Contract between Vendor and the State of Delaware.

**These are ONLY Samples and as Placeholders**



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
HSS-XX-XXX, SERVICES TITLE  
CONTRACT NUMBER: INTERNAL CONTRACT NUMBER**

This Professional Services Agreement (“Agreement”) is entered into as of **START DATE** (Effective Date) and will end on **END DATE**, by and between the State of Delaware, Department of Health and Social Services, **DIVISION NAME**, (“Delaware”), and **VENDOR**, (the “Vendor”), with offices at **STREET, CITY, STATE ZIP**.

**WHEREAS**, Delaware desires to obtain certain services to **SERVICE DESCRIPTION**.  
**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. **Business Associate Agreement**, attached hereto as **APPENDIX XX**; and
  - c. **DTI Terms and Conditions**, attached hereto as **APPENDIX XX**; and
  - d. **Payment Schedule**, attached hereto as **APPENDIX XX**; and
  - e. **Statement of Work**, attached hereto as **APPENDIX XX**; and
  - f. **Delaware’s Request for Proposals**, attached hereto as **APPENDIX XX**; and
  - g. **Vendor’s Response** to the request for proposals, attached hereto as **APPENDIX XX**.
  - h. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price, or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.



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

## 2. **PAYMENT FOR SERVICES AND EXPENSES.**

- 2.1. The term of the initial contract shall be **FOUR (4) YEARS** from **START DATE**, through the **END DATE**. The Contract may be renewed for **THREE (3) OPTIONAL TWO (2) YEAR RENEWAL** periods through amendments between the Vendor and Delaware.
- 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 XX, Statement of Work**. The fee will be paid in accordance with the **Payment Schedule** attached hereto as part of **APPENDIX XX**.
- 2.4. Delaware's obligation to pay Vendor for the performance of services described in **APPENDIX XX, Statement of Work** will not exceed the fixed fee amount of **\$1,000,000.00**. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor, and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **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 lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.

- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.9. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers, and tractors. More detail is included in [IRS Publication 510 Excise Taxes](#). Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- 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:

**EMAIL ADDRESS**

### 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 and Policies](#) promulgated by the Department of Technology and Information ("DTI"), and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.



- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions, and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware’s review, approval, acceptance, or payment for any of Vendor’s services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor’s performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor’s associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

| Name | 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 XX**.
- 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 ensure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in **APPENDIX XX**.

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



- 5.7. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

**6. WORK PRODUCT.**

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



**7. CONFIDENTIAL INFORMATION.**

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

**8. WARRANTY.**

8.1. Vendor warrants that its services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. INDEMNIFICATION; LIMITATION OF LIABILITY.**

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

- a. The negligence or other wrongful conduct of the Vendor, its agents, or employees, or
- b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.

9.2. If Delaware promptly notifies Vendor in writing of a third-party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:

- a. Delaware's misuse or modification of the Deliverable;
- b. Delaware's failure to use corrections or enhancements made available by Vendor;
- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
- e. Information, direction, specification, or materials provided by Vendor or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either:
  - i. Procure the right for Delaware to continue using it;
  - ii. Replace it with a non-infringing equivalent;
  - iii. Modify it to make it non-infringing.



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

**10. EMPLOYEES.**

- 10.1. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Vendor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.
- 10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee, or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee, or independent contractor and with which a party comes into direct contact in the course of the services.
- 10.3. Possession of a Security Clearance, as issued by the Delaware Department of 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 Delaware or any of its officers, employees, or other agents.
- 11.3. Vendor shall be responsible for providing liability insurance for its personnel.
- 11.4. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.



## **12. DISPUTE RESOLUTION.**

- 12.1. At the option of the parties, they 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, the parties elect 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 a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

## **13. REMEDIES**

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. 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 affected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:
  - a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
  - b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
  - c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.
- 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 affected 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 15.6.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 15.6 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 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; APPLICABILITY.**

- 18.1. Neither the Vendor nor Delaware shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:
  - a. Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;
  - b. Diseases, plagues, quarantine, epidemics or pandemics;
  - c. Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or
- 18.2. The State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel



restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

- 18.3. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

**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. § 2101](#).

**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 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' 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 in the best interest of the State.



22.10. Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees.

**23. INSURANCE.**

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:
  - i. \$1,000,000 combined single limit each accident, for bodily injury;
  - ii. \$250,000 for property damage to others;
  - iii. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
  - iv. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in [21 Del. C. § 2118](#); and

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

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

**NAME**  
**HSS-XX-XXX**  
**DIVISION NAME**



**Department of Health and Social Services**

**EMAIL**

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. UNIQUE ENTITY IDENTIFIER.**

A System for Award Management (SAM) registration is required for Vendors receiving federal grants and monies. 2 CFR Part 25. The Unique Entity Identifier (UEI) is a 12-character alphanumeric ID assigned to an entity by SAM. The vendor and all subcontractors shall provide a UEI as part of this agreement and maintain an active registration with SAM. The Vendor and all subcontractors assume responsibility to remain compliant with SAM requirements and maintain an active registration. In the event that Vendor and all subcontractors do not comply, Delaware may terminate the agreement in accordance with Section 15.

**25. 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.

**26. PERFORMANCE BOND**

There is no Performance Bond requirement.

**27. ASSIGNMENT OF ANTITRUST CLAIMS.**

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



**28. 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.

**29. NOTICES.**

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

**DELAWARE:**

**NAME**  
**HSS-XX-XXX**  
**DIVISION NAME**  
**Department of Health and Social Services**  
**EMAIL**

**VENDOR:**

**VENDOR**  
**STREET**  
**CITY, STATE ZIP**



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

**VENDOR**

**Department of Health & Social Services**  
**DIVISION NAME**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Rebecca Reichardt Date  
Associate Deputy Cabinet Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Josette Manning, Esq. Date  
Cabinet Secretary

\_\_\_\_\_  
Title

\_\_\_\_\_  
N/A  
ARPA

\_\_\_\_\_  
IRM

\_\_\_\_\_  
N/A  
Training

\_\_\_\_\_  
CMP



**APPENDIX XX**

**BUSINESS ASSOCIATE AGREEMENT**

HSS-xx-xxx, services title  
internal contract number



## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA”) is entered into this **DAY** day of **MONTH**, **YEAR** (“**Effective Date**”), by and between University of Delaware – Center for Drug & Health Studies (“**Business Associate**”), and the State of Delaware, Department of Health and Social Services, **DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH** (“**Covered Entity**”) (collectively, the “**Parties**”).

### **RECITALS**

**WHEREAS**, The Parties have entered, and may in the future enter, into one or more arrangements or agreements (the “Agreement”) which require the Business Associate to perform functions or activities on behalf of, or services for, Covered Entity or a Covered Entity Affiliate (“CE Affiliate”) that involve the use or disclosure of either (a) Protected Health Information (“PHI”) that is subject to the final federal Privacy, Security, Breach Notification and Enforcement Rules (collectively the “HIPAA Rules”) issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (the Act including the HIPAA rules shall be referred to as “HIPAA”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), or (b) health information relating to substance abuse and treatment (“Part 2 PHI”) protected under the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC § 290dd-2 and 42 CFR Part 2 (collectively, “Part 2”), as each is amended from time to time.

The purpose of this BAA is to set forth the obligations of the Parties with respect to such PHI and Part 2 PHI.

**WHEREAS**, Business Associate provides professional services for Covered Entity pursuant to a contract dated **ENTER DATE** and such other engagements as shall be entered into between the parties in the future in which Covered Entity discloses certain PHI or Part 2 PHI to Business Associate (collectively, the “Master Agreement”);

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

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

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

**WHEREAS**, Business Associate and Covered Entity are entering into this BAA to set forth Business Associate’s obligations with respect to its handling of the PHI, whether such PHI



was obtained from another business associate of Covered Entity or directly from Covered Entity;

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

**1. DEFINITIONS**

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

**1.1. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

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

**1.2. USE OR DISCLOSURE**

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

**1.3. SPECIFIC USE OF DISCLOSURE**

1.3.1. Except as otherwise limited by this BAA, Business Associate may:

- a. Use or disclose PHI to perform data aggregation and other services required under the Master Agreement to assist Covered Entity in its operations, as long as such use or disclosure would not violate HIPAA if done by Covered Entity, or HIPAA permits such use or disclosure by a business associate;
- b. Use or disclose PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities, provided that with respect to disclosure of PHI, such disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
- c. De-identify PHI and maintain such de-identified PHI indefinitely, notwithstanding Section 4 of this Agreement, provided that all identifiers are destroyed or returned in accordance with the Privacy Rule.

**1.3.2. MINIMUM NECESSARY**

Business Associate agrees to take reasonable efforts to limit requests for, or uses and disclosures of, PHI to the extent practical, a limited



data set, otherwise to the minimum necessary to accomplish the intended request, use, or disclosure.

#### 1.3.3. SAFEGUARDS

- a. Business Associate shall establish appropriate safeguards, consistent with HIPAA, that are reasonable and necessary to prevent any use or disclosure of PHI not expressly authorized by this BAA.
- b. To the extent that Business Associate creates, receives, maintains, or transmits Electronic PHI, Business Associate agrees to establish administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, as required by the Privacy Rule and Security Rule.
- c. The safeguards established by Business Associate shall include securing PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity in accordance with the standards set forth in HITECH Act § 13402(h) and any guidance issued thereunder.
- d. Business Associate agrees to provide Covered Entity with such written documentation concerning safeguards as Covered Entity may reasonably request from time to time.

#### 1.4. **AGENTS AND SUBCONTRACTORS**

- 1.4.1. Business Associate agrees to obtain written assurances that any agents, including subcontractors, to whom it provides PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including the requirement that it agree to implement reasonable and appropriate safeguards to protect Electronic PHI that is disclosed to it by Business Associate
- 1.4.2. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any and all acts, failures, or omissions of Business Associate's agents and subcontractors in any breach of their subcontracts or assurances to Business Associate as though they were Business Associate's own acts, failures, or omissions.

#### 1.5. **REPORTING**

- 1.5.1. Within five (5) business days of discovery by Business Associate, Business Associate agrees to notify Covered Entity in writing of any use or disclosure of, or Security Incident involving, PHI, including any Breach of Unsecured PHI, not provided for by this BAA or the Master Agreement, of which Business Associate may become aware.
  - a. In the notice provided to Covered Entity by Business Associate regarding unauthorized uses and/or disclosures of PHI, Business Associate shall describe the remedial or proposed mitigation efforts required under Section 1.6 (Mitigation) of this BAA.



- b. Specifically with respect to reporting a Breach of Unsecured PHI, Business Associate agrees to must include the identity of the individual(s) whose Unsecured PHI was Breached in the written notice provided to Covered Entity, and any additional information required by HIPAA.
- c. Business Associate agrees to cooperate with Covered Entity upon report of any such Breach so that Covered Entity may provide the individual(s) affected by such Breach with proper notice as required by HIPAA.

**1.6. MITIGATION**

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

**1.7. AUDITS AND INSPECTIONS**

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

**1.8. ACCOUNTING**

1.8.1. Business Associate agrees to document and report to Covered Entity, within fourteen (14) days, Business Associate's disclosures of PHI so Covered Entity can comply with its accounting of disclosure obligations in accordance with 45 C.F.R § 164.528 and any subsequent regulations issued thereunder.

1.8.2. Business Associate agrees to maintain electronic records of all such disclosures for a minimum of six (6) calendar years.

**1.9. DESIGNATED RECORD SET**

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

- a. For Covered Entity to comply with its access obligations in accordance with 45 C.F.R § 164.524 and any subsequent regulations issued thereunder; and
- b. For amendment upon Covered Entity's request and incorporate any amendments to PHI as may be required for Covered Entity comply with its amendment obligations in accordance with 45 C.F.R § 164.526 and any subsequent guidance.

**1.10. HITECH COMPLIANCE DATES**

Business Associate agrees to comply with the HITECH Act provisions expressly addressed, or incorporated by reference, in this BAA as of the



effective dates of applicability and enforcement established by the HITECH Act and any subsequent regulations issued thereunder.

**2. PART 2 QSO COMPLIANCE.**

- a. To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits Part 2 PHI, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law; acknowledges and agrees that in receiving, storing, processing or otherwise dealing with any such patient records, it is fully bound by the Part 2 regulations; and, if necessary will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Part 2 regulations.
- b. Notwithstanding any other language in this Agreement, Business Associate acknowledges and agrees that any patient information it receives from Covered Entity that is protected by Part 2 is subject to protections that may prohibit Business Associate from disclosing such information to agents or subcontractors without the specific written consent of the subject individual.
- c. Business Associate acknowledges that any unauthorized disclosure of information under this section is a federal criminal offense.

**2.1. OBLIGATIONS OF COVERED ENTITY.**

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

**3. TERM AND TERMINATION.**

**3.1. TERM**

This BAA shall become effective upon the Effective Date and, unless otherwise terminated as provided herein, shall have a term that shall run concurrently with that of the last expiration date or termination of the Master Agreement.



**3.2. TERMINATION UPON BREACH**

3.2.1. Without limiting the termination rights of the Parties pursuant to the Master Agreement, upon either Party's knowledge of a material breach by the other Party to this BAA, the breaching Party shall notify the non-breaching Party of such breach and the breaching party shall have fourteen (14) days from the date of notification to the non-breaching party to cure such breach.

3.2.2. In the event that such breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this BAA and those portions of the Master Agreement that involve the disclosure to Business Associate of PHI, or, if non-severable, the Master Agreement.

**3.3. TERMINATION BY EITHER PARTY**

Either Party may terminate this BAA upon provision of thirty (30) days' prior written notice.

**3.4. EFFECT OF TERMINATION**

3.4.1. To the extent feasible, upon termination of this BAA or the Master Agreement for any reason, Business Associate agrees, and shall cause any subcontractors or agents to return or destroy and retain no copies of all PHI received from or created or received by Business Associate on behalf of, Covered Entity

3.4.2. Business Associate agrees to complete such return or destruction as promptly as possible and verify in writing within thirty (30) days of the termination of this BAA to Covered Entity that such return or destruction has been completed.

3.4.3. If not feasible, Business Associate agrees to provide Covered Entity notification of the conditions that make return or destruction of PHI not feasible.

3.4.4. Upon notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate agrees to extend the protections of this BAA to such PHI for as long as Business Associate maintains such PHI.

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

**4. MISCELLANEOUS.**

**4.1. REGULATORY REFERENCES**

A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

**4.2. AMENDMENT**

4.2.1. The Parties acknowledge that the provisions of this BAA are designed to comply with HIPAA and agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA.



4.2.2. Regardless of the execution of a formal amendment of this BAA, the BAA shall be deemed amended to permit the Covered Entity and Business Associate to comply with HIPAA.

**4.3. METHOD OF PROVIDING NOTICE**

4.3.1. Any notice required to be given pursuant to the terms and provisions of this BAA shall be in writing and may be either personally delivered or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each Party at the addresses listed in the Master Agreement currently in effect between Covered Entity and Business Associate

4.3.2. Any such notice shall be deemed to have been given if mailed as provided herein, as of the date mailed.

**4.4. PARTIES BOUND**

4.4.1. This BAA shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns.

4.4.2. Business Associate may not assign or subcontract the rights or obligations under this BAA without the express written consent of Covered Entity

4.4.3. Covered Entity may assign its rights and obligations under this BAA to any successor or affiliated entity.

**4.5. NO WAIVER**

4.5.1. No provision of this BAA or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach.

4.5.2. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

**4.6. EFFECT ON MASTER AGREEMENT**

4.6.1. This BAA together with the Master Agreement constitutes the complete agreement between the Parties and supersedes all prior representations or agreements, whether oral or written, with respect to such matters

4.6.2. In the event of any conflict between the terms of this BAA and the terms of the Master Agreement, the terms of this BAA shall control unless the terms of such Master Agreement are stricter, as determined by Covered Entity, with respect to PHI and comply with HIPAA, or the Parties specifically otherwise agree in writing.

4.6.3. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party.

4.6.4. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this BAA.

**4.7. INTERPRETATION**

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



**4.8. NO THIRD-PARTY RIGHTS**

Except as stated herein, the terms of this BAA are not intended, nor should they be construed to grant any rights, remedies, obligations, or liabilities whatsoever to parties other than Business Associate and Covered Entity and their respective successors or assigns.

**4.9. APPLICABLE LAW**

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

**4.10. JUDICIAL AND ADMINISTRATIVE PROCEEDINGS**

4.10.1. In the event that Business Associate receives a subpoena, court or administrative order, or other discovery request or mandate for release of PHI, Business Associate agrees to collaborate with Covered Entity with respect to Business Associate's response to such request.

4.10.2. Business Associate shall notify Covered Entity within seven (7) days of receipt of such request or mandate.

**4.11. TRANSMITTING ELECTRONIC PHI**

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



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

**VENDOR**

**Division Name**

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

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



**APPENDIX XX**

**DTI TERMS AND CONDITIONS**

hss-xx-xxx, services title  
internal contract number



## PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

### State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_  
between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

|   | Public Data | Non Public Data |   |
|---|-------------|-----------------|---|
| 1 | ✓           | ✓               | <p><b>Data Ownership:</b> The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.</p>   |
| 2 | ✓           | ✓               | <p><b>Data Usage:</b> The PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State’s <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a>), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information. No party related to the PROVIDER or contracted by the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware.</p>   |
| 3 | ✓           | ✓               | <p><b>Termination and Suspension of Service:</b> In the event of termination of the contract, PROVIDER shall implement an orderly return of State of Delaware data in CSV, XML, or another mutually agreeable format. The PROVIDER shall guarantee the subsequent secure disposal of State of Delaware data.</p> <ul style="list-style-type: none"> <li>a) Suspension of services: During any period of suspension, contract negotiation, or disputes, the PROVIDER shall not take any action to intentionally erase any State of Delaware data.</li> <li>b) Termination of any services or agreement in entirety: In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally erase any State of Delaware data for a period of ninety (90) days after the effective date of the termination. All obligations for protection of State data remain in place and enforceable during this 90-day period. After such 90- day period has expired, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data and shall thereafter, unless legally or contractually prohibited, dispose of all State of Delaware data in its systems or otherwise in its possession. Within this 90-day timeframe, the PROVIDER will continue to secure and back up State of Delaware data covered under the contract.</li> <li>c) Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</li> <li>d) Secure Data Disposal: When non-public data is provided by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods after ninety (90) days of the contract termination. The PROVIDER shall provide written <a href="#">certificates of destruction</a> to the State of Delaware.</li> </ul> |



## PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

### State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_ between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

|   | Public Data | Non Public Data |   |
|---|-------------|-----------------|---|
| 4 |             | ✓               | <p><b>Data Location:</b> The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.</p>   |
| 5 |             | ✓               | <p><b>Encryption:</b> The PROVIDER shall encrypt all non-public <b>data in transit</b> regardless of the transit mechanism. For engagements where the PROVIDER stores sensitive personally identifiable or otherwise confidential information, this data shall be <b>encrypted at rest</b>. The PROVIDER’s encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology <a href="#">FIPS140-2</a>, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the PROVIDER cannot offer encryption at rest, they must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach in accordance with the <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a>.</p>   |
| 6 |             | ✓               | <p><b>Breach Notification and Recovery:</b> The PROVIDER must notify the State of Delaware at <a href="mailto:eSecurity@delaware.gov">eSecurity@delaware.gov</a> immediately or within 24 hours of any determination of the breach of security as defined in 6 Del. C. §12B-101(2) resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. The PROVIDER shall send a preliminary written report detailing the nature, extent, and root cause of any such data breach no later than two (2) business days following notice of such a breach. The PROVIDER will continue to send any and all reports subsequent to the preliminary written report. The PROVIDER shall meet and confer with representatives of DTI regarding required remedial action in relation to any such data breach without unreasonable delay. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans’ Personally Identifiable Information (PII, as defined in Delaware’s <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a>) by PROVIDER or its subcontractors. The PROVIDER will assist and be responsible for all costs to provide notification to persons whose information was breached without unreasonable delay but not later than sixty (60) days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; or 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State will retain all determining authority for breach accountability and responsibility. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless. The PROVIDER shall not issue a media notice without the approval of the State.</p> |



## PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

### State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_ between State of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

| #                        | Public Data | Non Public Data        | Description   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
|--------------------------|-------------|------------------------|---|--|-------|-----------------------|---|--------------------------|---|-----|---------------------------|--------------------------|---|----------|----------------------------|--------------------------|---|-----------------|----------------------------|--------------------------|---|------------------|----------------------------|--------------------------|---|-------------------|-----------------------------|--------------------------|---|---------------------|-----------------------------|--------------------------|---|------------------------|------------------------------|
| 7                        |             | ✓                      | <p><b>Background Checks:</b> The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a federally compliant (IRS Pub 1075 2.C.3) criminal background check. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract, have no convictions, pending criminal charges, or civil suits related to any crimes of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of one (1) year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the PROVIDER's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.</p>   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| 8                        |             | ✓                      | <p><b>Security Logs and Reports:</b> The PROVIDER shall allow the State of Delaware access to system security logs that affect this engagement, its data, and or processes. This includes the ability for the State of Delaware to request a report of the records that a specific user accessed over a specified period of time.</p>   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| 9                        |             | ✓                      | <p><b>Sub-contractor Flow down:</b> The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.</p>   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| 10                       |             | ✓                      | <p><b>Contract Audit:</b> The PROVIDER shall allow the State of Delaware to audit conformance including contract terms, system security, and data centers, as appropriate. The State of Delaware may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least thirty (30) days advance written notice and shall not unreasonably interfere with the PROVIDER's business. In lieu of performing its own audit, the State may request the results of a third party audit from the PROVIDER or an attestation of compliance.</p>  |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| 11                       |             | ✓                      | <p><b>Cyber Liability Insurance:</b> An awarded vendor unable to meet the <a href="#">Terms and Conditions Governing Cloud Services and Data Usage Policy</a> requirement of encrypting PII at rest shall, prior to execution of a contract, present a valid certificate of cyber liability insurance at the levels indicated below. Further, the awarded vendor shall ensure the insurance remains valid for the entire term of the contract, inclusive of any term extension(s). Levels of cyber liability insurance required are based on the number of PII records anticipated to be housed within the solution at any given point in the term of the contract. Should the actual number of PII records exceed the anticipated number, it is the vendor's responsibility to ensure that sufficient coverage is obtained (see table below). In the event that vendor fails to obtain sufficient coverage, vendor shall be liable to cover damages up to the required coverage amount.</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 25%;">Level</th> <th style="width: 35%;">Number of PII records</th> <th style="width: 35%;">Level of Cyber Liability Required<br/>(Occurrence = Data Breach)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">0</td> <td style="text-align: center;">N/A</td> <td style="text-align: center;">Data is Encrypted at Rest</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">1</td> <td style="text-align: center;">1-10,000</td> <td style="text-align: center;">\$2,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">2</td> <td style="text-align: center;">10,001 – 50,000</td> <td style="text-align: center;">\$3,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">3</td> <td style="text-align: center;">50,001 – 100,000</td> <td style="text-align: center;">\$4,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">4</td> <td style="text-align: center;">100,001 – 500,000</td> <td style="text-align: center;">\$15,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">5</td> <td style="text-align: center;">500,001 – 1,000,000</td> <td style="text-align: center;">\$30,000,000 per occurrence</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">6</td> <td style="text-align: center;">1,000,001 – 10,000,000</td> <td style="text-align: center;">\$100,000,000 per occurrence</td> </tr> </tbody> </table> |  | Level | Number of PII records | Level of Cyber Liability Required<br>(Occurrence = Data Breach) | <input type="checkbox"/> | 0 | N/A | Data is Encrypted at Rest | <input type="checkbox"/> | 1 | 1-10,000 | \$2,000,000 per occurrence | <input type="checkbox"/> | 2 | 10,001 – 50,000 | \$3,000,000 per occurrence | <input type="checkbox"/> | 3 | 50,001 – 100,000 | \$4,000,000 per occurrence | <input type="checkbox"/> | 4 | 100,001 – 500,000 | \$15,000,000 per occurrence | <input type="checkbox"/> | 5 | 500,001 – 1,000,000 | \$30,000,000 per occurrence | <input type="checkbox"/> | 6 | 1,000,001 – 10,000,000 | \$100,000,000 per occurrence |
|                          | Level       | Number of PII records  | Level of Cyber Liability Required<br>(Occurrence = Data Breach)   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 0           | N/A                    | Data is Encrypted at Rest   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 1           | 1-10,000               | \$2,000,000 per occurrence  |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 2           | 10,001 – 50,000        | \$3,000,000 per occurrence  |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 3           | 50,001 – 100,000       | \$4,000,000 per occurrence  |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 4           | 100,001 – 500,000      | \$15,000,000 per occurrence   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 5           | 500,001 – 1,000,000    | \$30,000,000 per occurrence   |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |
| <input type="checkbox"/> | 6           | 1,000,001 – 10,000,000 | \$100,000,000 per occurrence  |  |       |                       |   |                          |   |     |                           |                          |   |          |                            |                          |   |                 |                            |                          |   |                  |                            |                          |   |                   |                             |                          |   |                     |                             |                          |   |                        |                              |



**PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE**  
**State of Delaware Terms and Conditions Governing Cloud Services and Data Usage Agreement**

Contract/Agreement # \_\_\_\_\_, Appendix \_\_\_\_\_ between State  
of Delaware and \_\_\_\_\_ dated \_\_\_\_\_

This document shall become part of the final contract.

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

FOR  
OFFICIAL

- 1-3 (Public Data)
- 1-11 (Non-Public)

**Provider Name/Address (print):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Provider Authorizing Official Name (print):** \_\_\_\_\_

**Provider Authorizing Official Signature:** \_\_\_\_\_

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



**APPENDIX XX**

**PAYMENT SCHEDULE**

hss-xx-xxx, services title  
internal contract number



**APPENDIX XX**

**STATEMENT OF WORK**

hss-xx-xxx, services title  
internal contract number



**APPENDIX XX**

**DELAWARE'S REQUEST FOR PROPOSAL**

hss-xx-xxx, services title  
internal contract number

**INCLUDED BY REFERENCE**



**APPENDIX XX**

**VENDOR'S RESPONSE TO THE REQUEST FOR PROPOSAL**

hss-xx-xxx, services title  
internal contract number

**INCLUDED BY REFERENCE**