



**AGENCY WITH CHOICE
ISSUED BY DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
CONTRACT NUMBER HSS-26-019**

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 – Templates/Sample Agreements
 - Professional Services Agreement
 - Business Associate Agreement
 - 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, hereafter referred to as DDDS or “the Division”, seeks professional services known as Financial Management Services (FMS), using the Agency with Choice (AWC) self-directed model under the DDDS Lifespan 1915(c) HCBS Medicaid Waiver, for individuals with intellectual and developmental disabilities who are living at home with their families. 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	September 5, 2025
Deadline for Questions	September 26, 2025



Response to Questions Posted by	October 10, 2025
Deadline for Receipt of Proposals	October 31, 2025 at 1:00 PM EST
Estimated Notification of Award	December 19, 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 September 26, 2025, when questions are due. All inquiries must be submitted in the Q/A section of the project listing in the Euna Procurement (formerly Bonfire) Portal (<https://dhss.bonfirehub.com>).

The Department's response to questions will be posted, according to the procurement schedule, under the project listing in Euna Procurement (formerly Bonfire) and to the State of Delaware Bid Solicitation Directory Website: <http://www.bids.delaware.gov> by October 10, 2025.

II. Scope of Services

The State of Delaware Division of Developmental Disabilities Services hereafter referred to as DDDS or "the Division", seeks an agency to perform professional services known as Financial Management Services (FMS), using the Agency



with Choice (AWC) model, for individuals with intellectual and developmental disabilities who are living at home with their families.

The entity who will deliver AWC will be called the Agency with Choice Provider, who will serve as the Common Law Employer. The Agency with Choice Provider will be responsible for providing Financial Management Services to participants and/or the participant's representative who choose self-directed supports for personal care and respite services.

Please refer to APPENDIX B for full Scope of Services.

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. The Vendor must attest that it has not been excluded from participation from Medicaid or Medicare as evidenced by its presence on the OIG Exclusions list or has not been terminated from participation under the Medicare program or the Medicaid program of another state for cause (Affordable Care Act Section 6501).

B. General Evaluation Requirements

1. Familiarity with needs and requirements
2. Experience serving as Common Law Employer



3. Cost/Budget
4. Experience with the principles of person-centered philosophy and self-determination
5. Experience serving individuals with intellectual and developmental disabilities
6. References

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 and on Euna Procurement (formerly 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 Euna Procurement (formerly 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:

Brandon Badley Sr.
Director of Lifespan Supports to Families
2540 Wrangle Hill Road
Suite 200
Bear, DE 19701
Brandon.Badley@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 Euna Procurement (formerly 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 October 31, 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 Euna Procurement (formerly Bonfire) directly at 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 Euna Procurement (formerly 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 June 30, 2027. 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 Euna Procurement (formerly 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 Euna Procurement (formerly Bonfire).

7. Proposal Opening

The State of Delaware will receive proposals via Euna Procurement (formerly 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 Euna Procurement (formerly Bonfire) [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 Euna Procurement (formerly 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 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, 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](#).

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
Familiarity and experience with Medicaid HCB Services, specifically as related to providing FMS in self-direction programs.	25
Experience serving as a Common Law Employer of workers recruited and referred for hire by program participants, and co-employing such workers with program participants in an AWC model of FMS	20
Cost Effectiveness of Budget Proposal	25
Experience with the principles of person-centered philosophy and self-determination.	10
Experience serving individuals with intellectual and developmental disabilities	10
References	10
Total	100%

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not 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 and four (4) optional 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 or email to:

THE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
Brandon Badley Sr
Director of Lifespan Supports to Families
2540 Wrangle Hill Road
Suite 200
Bear, DE 19701
Brandon.Badley@Delaware.gov

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:

State of Delaware
Division of Developmental Disabilities Services
Contract No: HSS-26-019
1054 South Governors Avenue
Dover, DE 19901

- 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.

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 ACH Payment, SUA Payment, or PCARD Payment. 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 25 011** 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 (2nd Tier Spend) Report
- Appendix A – Minimum Response Requirements
- Appendix B – Scope of Work / Technical Requirements
- Appendix C – 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 15th (or next business day after the 15th 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 Division of Developmental Disabilities (DDDS), 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 15th 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 2ND 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 2nd 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]



NO PROPOSAL REPLY FORM

Contract No. HSS-26-019

Title: Agency With Choice

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-26-019
CONTRACT TITLE: Agency With Choice
DEADLINE TO RESPOND: October 31, 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 (DDDS).

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 (DDDS).

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

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

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

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

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

YES _____ NO _____ if yes, please explain _____



Attachment 3

CONTRACT NO: HSS-26-019
CONTRACT TITLE: Agency With Choice

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.



Attachment 4

CONTRACT NO: HSS-26-019
CONTRACT TITLE: Agency With Choice

CONFIDENTIAL INFORMATION FORM

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

Confidentiality and Proprietary Information

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



CONTRACT NO: HSS-26-019
CONTRACT TITLE: Agency With Choice

BUSINESS REFERENCES

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

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

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

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

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

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

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.



SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. HSS-26-019 TITLE: Agency With Choice	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise ☐ Yes ☐ No 4e. Minority Business Enterprise ☐ Yes ☐ No 4f. Disadvantaged Business Enterprise ☐ Yes ☐ No 4g. Veteran Owned Business Enterprise ☐ Yes ☐ No 4h. Service-Disabled Veteran Owned Business Enterprise ☐ Yes ☐ No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (Signature)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor

STATE OF DELAWARE
MONTHLY USAGE REPORT[illegible]

It shall contain the six-digit department and organization code for each agency and school district.



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 . 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'.



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 2 of the Request for Proposal including an Applicant's experience, if any, providing similar services.
2. The 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—please refer to Appendix B for requirements for cost/budget for services provided. Please submit proposed costs for services in an Excel workbook.
4. One (1) complete and signed 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.

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/>



APPENDIX B

SCOPE OF WORK AND TECHNICAL REQUIREMENTS

TECHNICAL REQUIREMENTS

The State of Delaware Division of Developmental Disabilities Services hereafter referred to as DDDS or “the Division”, seeks an agency to perform professional services known as Financial Management Services (FMS), using the Agency with Choice (AWC) model, for individuals with intellectual and developmental disabilities who are living at home with their families.

The entity who will deliver AWC will be called the Agency with Choice Provider, who will serve as the Common Law Employer.

The Agency with Choice Provider will be responsible for providing Financial Management Services to participants and/or the participant’s representative who choose self-directed supports for personal care and respite services.

The Department will evaluate the Vendor’s qualifications related to the following:

1. Experience with Medicaid Home and Community-Based Services, specifically as related to providing Financial Management Services in self-direction programs.
2. Experience with the principles of person-centered philosophy and self-determination.
3. Experience serving individuals with intellectual and developmental disabilities.
4. Experience serving as a Common Law Employer of workers recruited and referred for hire by program participants, and co-employing such workers with program participants in an Agency with Choice model of Financial Management Services.
5. Cost Effectiveness of Proposed Budget.

To demonstrate its qualifications, the Vendor must provide a list of at least one but no more than three self-direction programs for which it has provided Financial Management Services in the past. The list must include the following information for each program:

1. Name of program and geographic area served (e.g., a state or county);
2. Number of program participants currently served by the Vendor;
3. Characteristics of the program participants served;



4. Years Vendor has spent offering Financial Management Services in the program;
5. Model of Financial Management Services (e.g., Agency with Choice, Vendor Fiscal/Employer Agent, Government Fiscal/Employer Agent) used in the program; and
6. One program reference & letter of recommendation for each program listed. This reference must include the reference's:
 - name,
 - title,
 - department,
 - phone number, and
 - email address.
7. The full policy and procedure manual used by the Vendor for the program, including all policies, procedures, and internal controls.

The Vendor shall describe its ability to meet each of the following criteria:

1. Employer Requirements

- A. Ensure all Vendor staff members receive training on person-centered philosophy and the philosophy of self-direction.
- B. Serve as the Common Law Employer for all employees who provide services to participants. This shall include the following:
 - a. Assist any participant or participant's representative with recruiting workers if they are unable or unwilling to recruit, select, and refer a worker for hire to the agency.
 - b. Interview all potential workers referred to the agency for hire.
 - c. Provide information to participants on how to be effective co-employers (e.g., managing employees successfully, communicating clearly to employees about job performance expectations, etc.) Participants and participants' representatives should be given primary control over worker recruitment and selection as well as managing, scheduling, supervising, and terminating workers. However, the Agency with Choice may assist the participant with these tasks at the participant's request.
 - d. As necessary, ensure any workers who fail to provide satisfactory services or have proven to be a poor fit for a particular participant are terminated from that co-employment relationship and no longer provide services to



- that particular participant. (Depending on the reason for the termination, workers may be formally discharged from the Agency with Choice, or re-assigned to another participant with the participant or participant's representative's consent.)
- e. Provide Participant Enrollment or Managing Employer packet to participant or participant's authorized representative and assist them to complete the packet that includes:
 - i. Participant Agreement, provided by the Division, that details the roles and responsibilities of the participant, participant's representative (if applicable), and Agency with Choice;
 - ii. HIPAA Notice of Privacy Practices;
 - iii. The Vendor's customer service contact information.
 - iv. Information on recruiting workers and how the Vendor may assist the participant or participant's representative with worker recruitment and training.
 - v. Any other forms or information requested by the State of Delaware.
 - f. Other employer duties as required by DDDS.
 - C. Provide all employees with an employee packet and assist them to complete the packet that includes, at minimum:
 - a. IRS W-4, *Employee's Withholding Allowance Certificate*;
 - b. USCIS Form I-9, *Employment Eligibility Verification*;
 - c. DE State Income Tax Withholding Certificate;
 - d. Employment contract that includes the employee's rate(s) of pay, to be signed by the employee and the Agency with Choice;
 - e. Authorization for criminal background checks;
 - f. A document detailing the roles and responsibilities of the Agency with Choice and of the participant or participant's representative;
 - g. Guidelines for proper completion of timesheets;
 - h. Payday schedules and associated timesheet submission deadlines;
 - i. Guidelines for proper completion of ISP notes with Electronic Visit Verification (EVV)
 - j. Other forms as requested by the State of Delaware.
 - D. Ensure that all required forms have been properly completed and returned to Vendor prior to employee providing service to participant(s).
 - E. If employee paperwork is not completed properly and information is missing and/or requires correction, return paperwork to employee with instructions for proper completion.



- F. Check all prospective employees', vendors', and independent contractors' Taxpayer Identification Numbers against the Office of Inspector General's List of Excluded Individuals and Entities (LEIE) prior to hire to ensure they are eligible to participate in the program.
- G. Conduct all required criminal background checks, including the Adult Abuse Registry, Sex Offender Registry, Child Protection Registry, Division of Professional Regulation Registry (as applicable), and State and Federal Criminal Background Checks.
- H. Submit for background check results within three (3) business days of receiving a properly completed background check authorization from employee.
- I. Notify employee and participant (and participant's representative if applicable) that employee can begin service within three (3) days of all employee and participant enrollment information being complete, including acceptable background checks on record.
- J. Report newly hired employees to the State of Delaware per state new hire reporting requirements.
- K. Maintain a list of all employees indicating by which DDDS consumer(s) they are employed and provide the list to DDDS upon request.
- L. Ensure training of newly hired employees on CPR and first aid techniques to protect participant health and safety.
- M. Ensure training of newly hired employees on assisting participants with medication administration, when applicable.
- N. Provide all vendors and independent contractors with a vendor packet that includes, at minimum:
 - a. IRS Form W-9, *Request for Taxpayer Identification Number*;
 - b. Background check authorization(s), as applicable;
 - c. Any other forms or information requested by the State of Delaware.
- O. Obtain and maintain workers' compensation coverage in accordance with State of Delaware requirements.
- P. Use IRS Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* to receive a formal IRS determination if the Vendor is unable to determine a worker's correct classification as an employee or independent contractor.
- Q. If Vendor qualifies as an Applicable Large Employer (ALE) under the Affordable Care Act, provide plan to comply with the Affordable Care Act's requirement to provide health insurance to employees who work at least 30



hours in a workweek.

- R. Document and report any instance of suspected fraud, waste, or abuse to the State of Delaware for investigation.
- S. Have documented policies, procedures, and internal controls for all tasks set forth in this Section (Employer Requirements).

2. Budget Management Requirements

- A. Initiate the participant enrollment process once a participant's authorization is received. Authorization information will be received electronically via a program-wide electronic case record system that the vendor is required to use. Authorization information will be sent to the Agency with Choice after a participant's person-centered plan has been developed in consultation with the participant's Community Navigator and finalized.
- B. Provide information to participants and participants' representatives about how to use their authorization in a responsible and sustainable manner.
- C. Track all participant expenditures against the participant's authorization.
- D. Provide regular utilization reports to participant and/or participant's representative on a monthly basis, until the allotment cap is reached, showing the amount spent and the amount remaining in the authorization period.
- E. Provide regular utilization reports to participant's Community Navigator and DDDS AWC Liaison on a monthly basis, until the allotment cap is reached, showing the amount spent by the participant or participant's representatives and the amount remaining in the authorization period.
- F. Track worker hours, monitor to ensure the employee does not work in excess of 29.75 hours per week, and pay overtime as needed to any worker who works over 40 hours in a workweek, regardless of the number of participants served by the worker.
 - a. **Note:** If a worker travels and this travel is compensable under FLSA requirements, the worker's payment may be paid out of a participant's authorization if the participant has authorized the travel. If a worker travels and this travel is compensable under FLSA requirements, the worker's payment may not be paid out of a participant's authorization if the participant has not authorized



- b. the travel. (E.g., the worker finished a shift at one participant's home and subsequently traveled to another participant's home to begin a new shift.)
Such travel, if and when it occurs, must be paid by the Vendor.
- G. Offer an electronic timesheet option for participants who choose to review and approve worker time electronically.
- H. Develop a paper timesheet that is easy to use for program participants and workers who are not able to use the electronic timesheet, and require that all timesheets be signed and approved by the managing employer prior to being approved for payment.
- I. If participant's spending pattern indicates the participant is on track to over utilize his or her authorization, contact the participant's Community Navigator within two business days to refer the participant for follow-up training, a re-assessment, or other corrective measure.
- J. Allow program participants to fax or mail paper timesheets.
- K. Only allow timesheets that have been approved by both the worker and managing employer and that show expenditures in accordance with the participant's authorization to move forward for payment.
- L. Retain records of all approved expenditures for a minimum of seven years.
- M. In order to comply with Section 12006 of the 21st Century Cures Act, which concerns verifying the delivery of Medicaid-funded personal care services via an Electronic Visit Verification (EVV) system, the vendor will require caregivers to document time worked, location and case notes in the Division's Electronic Case Record System.
 - a. In Delaware, Electronic Visit Verification (EVV) is overseen by the Delaware Department of Health and Social Services (DHSS), specifically through its Division of Medicaid and Medical Assistance (DMMA).
 - b. If you need contact information or details about implementation timelines, the DMMA also maintains an EVV Provider Service Team reachable via DHSS_DMMA_EVV@delaware.gov
- N. Agency With Choice Self-Directed Respite and Personal Care services are 1915(c) Home and Community Based (HCBS) Medicaid Lifespan waiver funded services and are subject to federal requirements surrounding Electronic Visit Verification (EVV) since it is comprised primarily of personal care supports and is delivered via "in home" visits.
 - a. Section 120006 (a) of the 21st Century Cures Act CMS mandates that states implement EVV for all Medicaid personal care services (PCS) and home health services (HHCS) that require an in-home visit by a provider. This applies to services provided under sections 1905(a)(24), 1915(c), 1915(i), 1915(j), 1915(k), and Section 1115; and HHCS provided under 1905(a)(7) of the Social Security Act or a waiver." <https://www.medicaid.gov/medicaid/home-community-based->



[services/guidance/electronic-visit-verification-evv/index.html](https://www.dhss.delaware.gov/services/guidance/electronic-visit-verification-evv/index.html)

- b. Respite and/or Personal Cares services provided by a caregiver living in the home are not required to use EVV.
- c. Each service rendered that is covered under this mandate must have EVV attached to the service claim in order to be paid. Claims for services rendered that do not have EVV attached will be denied by Medicaid for payment.
- O. Have documented policies, procedures, and internal controls for all tasks set forth in this Section (Budget Management Requirements).

3. Payroll & Tax Reporting Requirements

- A. Issue paychecks for program workers on a biweekly basis and withhold and pay all applicable federal and state taxes, including Federal Income Tax, FICA (Social Security/Medicare), and Delaware State Income Tax, as well as any garnishments, liens, and levies.
- B. Comply with Delaware minimum wage requirements by ensuring each worker is paid at least state minimum wage.
- C. Comply with the Fair Labor Standards Act (FLSA), the FLSA Home Care Final Rule, and Delaware labor law by ensuring overtime is paid to employees who work over 40 hours in a workweek, and that employees are paid wages in circumstances in which their travel is considered compensable under the FLSA.
- D. Ensure compensable travel that was not authorized or controlled by a participant (e.g., travel from one participant's home to another during a single work day) is not paid out of a participant budget.
- E. File and deposit employer taxes, including FUTA, SUTA, and the employer share of FICA (Social Security/Medicare) taxes per Internal Revenue Service and State of Delaware mandated timelines, and maintain documentation of all such deposits.
- F. Offer a direct deposit option to all employees who provide services to participants.
- G. Issue Forms W-2 to all employees at year-end and file all Forms W-2 and Form W-3 timely with the Internal Revenue Service.
- H. Issue Forms 1099-MISC to all non-employee vendors and independent contractors at year-end, and file Forms 1099-MISC timely with the Internal Revenue Service.
- I. File Form 941, *Employer's Quarterly Tax Return*, on a quarterly basis with the Internal Revenue Service.
- J. File Form 940, *Employer's Annual Federal Unemployment Tax (FUTA) Tax*



Return, on an annual basis with the Internal Revenue Service.

- K. Maintain records of all tax withholding and payments made on behalf of workers providing services to program participants for a minimum of 7 years.
- L. Have a documented procedure in place for remaining up-to-date with all applicable federal and state rules and regulations that affect the Vendor's responsibilities as set forth in the Contract.
- M. If Vendor plans to use a reporting agent to execute any of the tasks described in this Section, the following information must be provided:
 - a. The name of the reporting agent;
 - b. The name, phone number, mailing address, and email address of the reporting agent's primary contact.
 - c. The payroll tasks to be performed by the reporting agent.
 - d. The means by which the Vendor will authorize the reporting agent to perform these tasks on behalf of the Vendor, which must be in accordance with IRS Revenue Procedure 2012-32.
- N. Develop and maintain written policies, procedures, and internal controls for all tasks described in this Section (3. Payroll & Tax Reporting Requirements).

4. Customer Service Requirements

- A. Vendor must offer and maintain a robust customer service system that provides, at minimum:
 - a. A toll-free phone number;
 - b. A TTY number;
 - c. A secure fax line;
 - d. A secure email system to communicate with participants;
 - e. Web-based information for participants, workers, and families;
 - f. Staff members able to respond to incoming calls during regular business hours, i.e., from 8:00 AM to 4:30 PM Eastern Time, Monday – Friday, excepting State of Delaware holidays listed here:
<https://dhr.delaware.gov/labor/holidays/>
 - g. A voicemail system to track participant, family, and worker inquiries after hours, and capability to respond to all participant, family, and worker voicemail within two (2) business days.
 - h. Access to an emergency line available during regular business hours to



- assist participants and families with emergency needs (e.g., emergency respite). Callers must be able to speak with a live person during business hours via this emergency line.
- i. A system to track all participant, family, and worker inquiries and concerns.
- B. Develop and maintain a grievance procedure and provide participants and employees information about the grievance procedure upon enrollment.
- C. Provide translation and interpreter services on an as-needed basis.
- D. Conduct an annual Participant Satisfaction Survey and report results to the State, and implement a Corrective Action Plan if required by the State.
- E. Have documented policies, procedures, and internal controls for all tasks set forth in this Section (Customer Service Requirements).

5. Data Security Requirements

- A. Describe capabilities, including encryption methods, to store all participant Protected Health Information (PHI) in full compliance with the Health Insurance Portability and Accountability Act (HIPAA) and HITECH Act.
- B. Describe capabilities to conduct all email-based correspondence with participants' over secure email.
- C. Describe physical safeguards in Vendor's office location that protect PHI from potential breach.
- D. If Vendor's staff are able to access to PHI via company-owned mobile devices, describe security measures in place on these devices to protect PHI from potential breach.
- E. Have documented policies, procedures, and internal controls for all tasks set forth in this Section (Data Security Requirements).

6. Business Continuity & Disaster Recovery Requirements

Vendor must submit a Business Continuity Plan that includes disaster recovery procedures in the event of fire, flood, other natural disaster, or any other event that substantially impacts the Vendor's business operations. This Plan must include a security plan that protects program participants' Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in the event that the Vendor's normal business operations site is compromised.



The Plan must describe how the Vendor will continue performing the Work in the event that a disaster occurs. The Plan must include provisions for a back-up site at which the Vendor will continue performing business operations in the event the Vendor's usual business site is compromised or unusable.

7. Estimated Participation

Individuals Electing Self- Direction	# of persons SFY 2027	# of persons SFY 2028	# of persons SFY 2029	# of persons SFY 2030	# of persons SFY 2031
Total	475	525	575	625	675

8. Vendor Payments

In its proposal, the Vendor will propose:

- a one-time startup fee for each participant who enrolls with the Agency with Choice Provider, and
- a monthly Per Member Per Month (PMPM) administrative fee for each active enrolled participant.

The monthly administrative fee will only be paid for months when payments for services or wages have been rendered on behalf of the enrolled participant.

9. Billing Requirements

The Vendor must have a single bank account used to receive all payments received from the State of Delaware for provision of self-directed personal care and respite services.

Upon execution of a contract with DDDS, the Vendor shall enroll with the Delaware Medical Assistance Program (DMAP) as a Medicaid provider of personal care and respite services. The DDDS AWC contract shall constitute verification that the vendor meets the Medicaid enrollment criteria.

The Vendor shall submit HIPAA-standard electronic claims for personal care and respite services delivered to DDDS waiver members. The claim shall be no greater than the vendor's payment to the employee, inclusive of all taxes.



The Vendor shall bill the State a one-time startup fee for each participant who enrolls with the Agency with Choice model, as well as a monthly Per Member Per Month (PMPM) administrative fee for each active enrolled participant.

The Vendor shall only bill for the monthly administrative fee for months when payments for services or wages have been rendered on behalf of the enrolled participant during the calendar month

10. Electronic Case Record Requirement

The Vendor shall provide Agency with Choice Financial Management Services for those individuals who choose to self-direct their personal care and respite services. The AWC Provider will be responsible for ensuring that services are delivered by qualified providers. The AWC Provider will be responsible for ensuring that all activities and services performed related to self-directed respite and personal care are documented in the specified DDDS electronic case record (ECR). Through access to the ECR, the AWC provider will be able to monitor the delivery and utilization of both personal care and respite services for each individual that elects to self-direct these services. DDDS will arrange for the Provider(s) to have access to this system. **There will be no cost to the vendor to use this ECR.**

The AWC Provider will be responsible for maintaining the portion of an individual's record relative to self-directed services for personal care and respite in the Division's electronic case record system. The electronic case record documents information that the AWC provider will need to maintain including but not limited to; the date the person enrolled with the AWC, type of service utilized (respite or personal care) date of service provision, number of units paid, name of service provider, whether or not the provider is a family member, guardian, or other service provider, what activities were completed under the deliverable service, and any issues or areas of concern.

In addition the AWC Provider will be required to report to DDDS monthly on the following information including but not limited to; name of the person receiving services, corresponding MCI#, dated enrolled with the Provider, county that the person lives in (address), type of service rendered (respite or personal care), type of caregiving entity used (self-directed caregiver, camp, day camp), name of the



caregiver/entity, date service provided, number of units utilized, activities that occurred under the deliverable service, wage paid per unit to employee, balance available per person against maximum allotment, date any individual opts for voluntary termination of self-directed services, any providers that have been terminated and the reason for termination.

The majority of the above information will be captured in the ECR and reports can be generated for submission to DDDS. In addition, the AWC Provider will need to provide an updated registry of all service providers including hours worked each week by each employee including any applicable travel time. The Provider will:

- A. Ensure that their designated responsible parties will have ready access to the individual's electronic case so that information can be entered and updated as needed.
- B. Maintain confidentiality policies and procedures for protecting individual records that are responsive to the HIPAA requirements for electronic and paper records per <https://dhss.delaware.gov/wp-content/uploads/sites/5/ddds/pdf/HipaaConfidentialitypolicyfinal.pdf> [DDDS Policy HIPAA & Confidentiality Revision Table dated November 1, 2017](#) embedded as hyperlink, and include a proposed consent for release of information form.
- C. Utilize secure encrypted email for any email communication regarding DDDS participants that contains the participant name or other protected health information as defined under HIPAA.
- D. Have documented policies, procedures, and internal controls for all tasks set forth in Section 8-- Vendor Payments.

11. Reporting Requirements

- A. Provide regular utilization reports to participant and/or participant's representative on a monthly basis, showing the amount spent and the amount remaining in the authorization period.
- B. Provide regular utilization reports to participant's Community Navigator on a monthly basis, showing the amount spent and the amount remaining in the authorization period.
- C. Provide all information requested by the State of Delaware on a monthly basis, including but not necessarily limited to the following:
 - a. Name of each person receiving services;



- b. MCI number;
 - c. Type of service rendered (i.e., respite or personal care);
 - d. Type of caregiving entity used (e.g., self-directed caregiver, camp, day camp, etc.);
 - e. Name of provider;
 - f. Date service provided;
 - g. Number of units utilized;
 - h. Activities that occurred under the deliverable service; ex. Assisted with bathing, meal preparation, etc.
 - i. Wage paid per unit to provider;
 - j. Balance available per person against maximum allotment;
 - k. Date any individual opts for voluntary termination of self-directed services;
 - l. Name and reason for termination for any providers/caregivers that have been terminated
- D. Provide on a quarterly basis the following reports to the State of Delaware:
- a. Average time to return client calls; and
 - b. Average # of days from initial referral to first contact; and
 - c. Average number of days from initial referral until the person starts receiving service.

12. Quality Assurance Requirements

- A. Implement and maintain a robust quality assurance and improvement system that incorporates quantitative measures for ongoing organizational improvement.
- B. Have at least one staff member with CPA (Certified Public Accountant) credentials, CPP (Certified Payroll Professional) credentials, or a bachelor's degree in accounting. A resume must be provided for each staff member with such credentials. A minimum of three years' industry experience in Financial Management Services or a closely related human services field may be used to substitute for these credentials.
- C. Provide any information requested by the Division for purposes of a performance review conducted by the Division or by a DDDS-authorized entity.
- D. Monitor indicators that a participant or participant's representative may need additional Managing Employer training (e.g., unusually high turnover of workforce, worker or participant/family complaints, etc.) and refer participant or participant's representative for follow-up training.



- E. Have documented policies, procedures, and internal controls for all tasks set forth in Section 10-- Electronic Case Record Requirement..

13. Subcontractor Requirements

- A. If the Vendor plans to subcontract any task(s) set forth above, each task to be subcontracted must be listed, along with the organization's name that will be responsible for completion of the task(s). Contact information (name, phone number, fax number, and email address) for the lead individual at the organization responsible for completion of the task(s) described above must be included. Information should be provided about how the Subcontractor will complete the subcontracted task(s) and its capabilities to ensure successful completion. (Please use Attachment 6 to identify subcontractor(s) used.)

14. Financial Stability Requirements

- A. The AWC Provider must submit DDDS a Full Financial Audit (as defined by GAAS) conducted by a public accounting firm or private CPA for its fiscal year within 6 months of the close of the agency's fiscal year unless an alternative financial audit reporting method has been approved by the Division in writing. For agencies that have operations in multiple states, the audit must be specific to the Delaware operations and any related parent company expenses.

15. Policy and Procedure Manual Requirements

- A. The Vendor shall submit a Delaware-specific Agency with Choice Financial Management Services policy and procedure manual that includes policies, procedures, and internal controls.
- B. The Vendor must have a system of internal controls to assure optimum performance under the contract that controls risk and ensures operational effectiveness, reliable financial reporting, and compliance with all applicable laws, regulations, and policies. This must include, at minimum:
 - a. A clear hierarchical organizational structure;
 - b. Assignment of roles and responsibilities;
 - c. Review and approval authorizations;
 - d. Segregation of duties;



- e. Checks and balances;
- f. Safeguarding and accountability of assets;
- g. Account reconciliation;
- h. An internal auditing process;
- i. Processes to prevent and detect fraud, waste, and abuse; and
- j. A process for addressing audit findings, including to whom they are reported within the organization.

[balance of page is intentionally left blank]



APPENDIX C – 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, AGENCY WITH CHOICE
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 of Developmental Disabilities**, ("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 **Number of Year(s) for initial term** from **START DATE**, through the **END DATE**. The Contract may be renewed for **Number of x year(s) of renewal(s)** 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 **\$x,xxx,xxx**. 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 of Developmental Disabilities

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, **AGENCY WITH CHOICE**
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 DEVELOPMENTAL DISABILITIES** (“**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

By: _____
Name: _____
Title: _____
Date: _____

Division Name

By: _____
Name: _____
Title: _____
Date: _____



APPENDIX XX

DTI TERMS AND CONDITIONS

hss-xx-xxx, **AGENCY WITH CHOICE**
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	✓	✓	Data Ownership: 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.
2	✓	✓	Data Usage: 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 Terms and Conditions Governing Cloud Services and Data Usage Policy), 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.
3	✓	✓	Termination and Suspension of Service: 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. 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. 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. 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. 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 certificates of destruction to the State of Delaware.



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		✓	Data Location: 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.
5		✓	Encryption: The PROVIDER shall encrypt all non-public data in transit regardless of the transit mechanism. For engagements where the PROVIDER stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest . The PROVIDER's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2 , 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 Terms and Conditions Governing Cloud Services and Data Usage Policy .
6		✓	Breach Notification and Recovery: The PROVIDER must notify the State of Delaware at eSecurity@delaware.gov 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 Terms and Conditions Governing Cloud Services and Data Usage Policy) 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.



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																																	
7		✓	Background Checks: 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.																																
8		✓	Security Logs and Reports: 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.																																
9		✓	Sub-contractor Flow down: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.																																
10		✓	Contract Audit: 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.																																
11		✓	Cyber Liability Insurance: An awarded vendor unable to meet the Terms and Conditions Governing Cloud Services and Data Usage Policy 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. <table><tr><th></th><th>Level</th><th>Number of PII records</th><th>Level of Cyber Liability Required (Occurrence = Data Breach)</th></tr><tr><td>☐</td><td>0</td><td>N/A</td><td>Data is Encrypted at Rest</td></tr><tr><td>☐</td><td>1</td><td>1-10,000</td><td>\$2,000,000 per occurrence</td></tr><tr><td>☐</td><td>2</td><td>10,001 – 50,000</td><td>\$3,000,000 per occurrence</td></tr><tr><td>☐</td><td>3</td><td>50,001 – 100,000</td><td>\$4,000,000 per occurrence</td></tr><tr><td>☐</td><td>4</td><td>100,001 – 500,000</td><td>\$15,000,000 per occurrence</td></tr><tr><td>☐</td><td>5</td><td>500,001 – 1,000,000</td><td>\$30,000,000 per occurrence</td></tr><tr><td>☐</td><td>6</td><td>1,000,001 – 10,000,000</td><td>\$100,000,000 per occurrence</td></tr></table>		Level	Number of PII records	Level of Cyber Liability Required (Occurrence = Data Breach)	☐	0	N/A	Data is Encrypted at Rest	☐	1	1-10,000	\$2,000,000 per occurrence	☐	2	10,001 – 50,000	\$3,000,000 per occurrence	☐	3	50,001 – 100,000	\$4,000,000 per occurrence	☐	4	100,001 – 500,000	\$15,000,000 per occurrence	☐	5	500,001 – 1,000,000	\$30,000,000 per occurrence	☐	6	1,000,001 – 10,000,000	\$100,000,000 per occurrence
	Level	Number of PII records	Level of Cyber Liability Required (Occurrence = Data Breach)																																
☐	0	N/A	Data is Encrypted at Rest																																
☐	1	1-10,000	\$2,000,000 per occurrence																																
☐	2	10,001 – 50,000	\$3,000,000 per occurrence																																
☐	3	50,001 – 100,000	\$4,000,000 per occurrence																																
☐	4	100,001 – 500,000	\$15,000,000 per occurrence																																
☐	5	500,001 – 1,000,000	\$30,000,000 per occurrence																																
☐	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, **AGENCY WITH CHOICE**
internal contract number



APPENDIX XX

STATEMENT OF WORK
hss-xx-xxx, **AGENCY WITH CHOICE**
internal contract number



APPENDIX XX

DELAWARE'S REQUEST FOR PROPOSAL
hss-xx-xxx, **AGENCY WITH CHOICE**
internal contract number

INCLUDED BY REFERENCE



APPENDIX XX

VENDOR'S RESPONSE TO THE REQUEST FOR PROPOSAL

hss-xx-xxx, **AGENCY WITH CHOICE**
internal contract number

INCLUDED BY REFERENCE