

**PROFESSIONAL SERVICES AGREEMENT
FOR
RESIDENTIAL HABILITATION, DAY PROGRAM SERVICES AND/OR CLINICAL SERVICES**

This Professional Services Agreement (“Agreement”) is entered into as of **Start Date** (the “Effective Date”) and will end **End Date** by and between the State of Delaware, Department of Health & Social Services, Division of Developmental Disabilities Services (“Delaware”) and **Vendor**, (the “Vendor”), with offices at **Address, City, State Zip**.

WHEREAS, Delaware desires to obtain certain services, namely the provision of Residential Habilitation, Day Program Services, and/or Clinical Services to authorized consumers as outlined in Appendix A and A-1.

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

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

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

1. Services

- 1.1 Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) Delaware’s request for proposals, attached hereto as Appendix **N/A**; and (c) Vendor’s response to the request for proposals, attached hereto as Exhibit **N/A**. 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 the Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.
- 1.4 Vendor will not be required to make changes to its scope of work that result in Vendor’s costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses

- 2.1 The term of the initial contract shall be from **Start Date** through **End Date**. Delaware shall pay the Vendor as set forth in this Section 2 and the applicable Appendices provided that the Vendor shall receive compensation for certain services pursuant to separate arrangements made by Vendor with Delaware’s State Medicaid Program.

- 2.2 Delaware will pay Vendor for the performance of services described in Appendix B Statement of Work. The fees will be paid in accordance with the rates and payment schedule attached hereto as part of Appendix C.
- 2.3 Delaware's obligation to pay Vendor for the performance of non-Medicaid services described in Appendix B, Statement of Work will not exceed the amount of **FY17_Contract_Amount**. 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 fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.4 Vendor shall submit monthly invoices to Delaware in sufficient detail to support the non-Medicaid 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.
- 2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by the Vendor. In 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.
- 2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.
- 2.7 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.
- 2.8 Invoices payable by Delaware shall be submitted to:

**Contract Manager
Delaware Department of Health & Social Services
Division of Developmental Disabilities Services
Office of Budget, Contracts, and Business Services
Woodbrook Professional Center
1054 South Governors Avenue
Dover, DE 19904**

3. Responsibilities of Vendor

- 3.1 Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all

services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information (“DTI”) published at <http://dti.delaware.gov> and as modified from time to time by DTI during the term on 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, licensing standards and other regulations. Vendor shall immediately notify Delaware in writing of any change in the status of any Vendor license, accreditation or certification that is directly related to vendor’s duties under this Agreement. Vendor will not produce a work product that violates or infringes on any copyright of 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 the Agreement shall be performed by the Project Manager, or by Vendor’s associates and employees under the personal supervising of the Project Manager. The positions anticipated include:

<u>Project Manager</u> First Name Last Name	<u>Title</u> Title	<u>% of Project Involvement</u> 100%
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- 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 time 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 in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule

The Services covered by this Agreement shall be provided in accordance with timing requirements provided in the applicable Appendices hereto.

5. State Responsibilities

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

Vendor shall return any original data provided by Delaware.

- 5.6 Delaware shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.
- 5.7 Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

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

6. Work Product

- 6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- 6.2 Vendor retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. Any and all source code developed in connection with the services provided 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.
- 6.5 Notwithstanding anything to the contrary contained herein or any attachment hereto, any and all client or customer-related Personal Health Information (as defined under HIPPA) shall (a) not be disclosed to any third-party unless authorized by Delaware in writing (or pursuant to the specific terms of this Agreement), and (b) remain the sole property of Delaware as between the parties hereto.

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 including without limitation any and all Personal Health Information (as defined under HIPPA).

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

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

10. Employees

- 10.1 Vendor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Vendor in the performance of the services hereunder provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals. Notwithstanding the foregoing, in the event that Delaware (a) notifies Vendor of the existence of a client health/safety issue (as determined by Delaware, in its sole discretion) and (b) directs Vendor to immediately halt any or all affected services hereunder or to cause any specified Vendor employee or representatives to cease any or all efforts hereunder. Vendor shall immediately comply with such request, pending further instructions from Delaware. Such a cessation of service shall not operate as a wholesale termination of this Agreement unless and until Delaware provides written notice to such effect in accordance with the terms of this Agreement.
- 10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.
- 10.3 Possession of a Security Clearance, as issued by the Delaware Department of Public Safety, may be required of any employee of Vendor who will be assigned to this project.

11. Independent Contractor

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

12. Dispute Resolution

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

13. Suspension

- 13.1 In addition to the rights granted to Delaware in Section 10 relating to the existence of a client health/safety issue, 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 20 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 (except work relating to portions of the Services not suspended at the direction of Delaware) after the effective date of suspension until receipt of written notice from Delaware to resume performance.
- 13.2 In the event Delaware suspends performance by Vendor for any cause other than (a) a client health/safety issue, or (b) the error or omission of the Vendor, for an aggregate period in excess of 20 days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

14. Termination

- 14.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party, but only after the other party is given:
- a. Not less than 10 calendar days' written notice of intent to terminate; and
 - b. An opportunity for consultation with the terminating party prior to termination.

- 14.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:
- a. Not less than 20 calendar days' written notice of intent to terminate, and
 - b. An opportunity for consultation with Delaware prior to termination.
- 14.3 If termination for default is effected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of this termination, but:
- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
 - b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
 - c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.
- 14.4 If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.
- 14.5 The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.
- 14.6 Gratuities
- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
 - b. In the event this Agreement is terminated as provided in 14.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
 - c. The rights and remedies of Delaware provided in Section 14.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15. Severability

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

16. Assignment; Subcontracts

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

17. Force Majeure

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

18. Non-Appropriation of Funds

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

19. State of Delaware Business License

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

20. Complete Agreement

- 20.1 This Agreement and its Appendices shall constitute the entire Agreement between Delaware and the 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 understanding of the parties with respect to the subject matter of this Agreement.

- 20.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 20.3 Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

21. Miscellaneous Provisions

- 21.1 In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws and ordinances, codes and regulations for which Vendor assumes full responsibility for current and detailed knowledgeable. Vendor shall solely bear the costs of all required licenses, permits and other relevant costs required in the performance of this Agreement.
- 21.2 In the event that (a) the provision of all or any portion of the services is halted or suspended, or (b) this Agreement is terminated, Vendor shall in either case (i) provide Delaware with all applicable case records, personal property, medications and similar items owned by, used by, or otherwise relating to the affected client(s) being served by Vendor on behalf of Delaware pursuant to this Agreement; and (ii) take all other actions reasonably requested by Delaware to assist in an orderly transition of care and services to such affected clients.
- 21.3 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 21.4 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 further exercise thereof or the exercise of any other right.
- 21.5 Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- 21.6 Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.
- 21.7 Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the

contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- 21.8 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.
- 21.9 Vendor shall maintain all public records, as defined by 29 *Del. C.* §502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22. Insurance

- 22.1 Vendor shall maintain the following insurance during the term of this Agreement:
- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
 - b. Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate, and
 - c. Medical/Professional Liability (including sexual abuse coverage) - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate; and
 - d. Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000.00 per aggregate, and
 - e. Automotive Liability Insurance (Bodily Injury) covering all automotive units used in the work (including units transporting Delaware clients or staff) with limits of not less than \$100,000 per each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- 22.2 Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provision.
- 22.3 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:

**DHSS/Division of Developmental Disabilities Services
1054 South Governors Avenue
Dover, DE 19904**

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

23. Assignment of Antitrust Claims

As consideration for the award and execution of this contract by the State, Vendor hereby grants, conveys, sells, assigns, and transfers to 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, relating to the particular goods or services purchased or acquired by or for the State pursuant to this Agreement. Upon either the State's or

the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

24. Governing Law

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

25. Notices

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

DELAWARE:

**State of Delaware, Department of Health & Social Services
Division of Developmental Disabilities Services
Woodbrook Professional Center
1056 South Governors Avenue
Dover, DE 19904
Attention: DDDS Director**

VENDOR:

**First_Name Last_Name
Title
Vendor
Address
City, State Zip**

**State of Delaware, Department of
Health & Social Services (if contract
value is over \$500,000)**

Witness

Kara Odom Walker, MD, MPH, MSHS
Secretary

Date

**For the Division of Developmental
Disabilities Services**

Witness

Jill Rogers
Director

Date

For the Vendor:

Witness

First_Name Last_Name
Title

Date