

COUNTY OF BERKS

Request for Proposals #24-35-GR

Older Adult Daily Living Center for Berks County Area Agency on Aging

Issued on November 25, 2024

Pre-Proposal Conference

**Wednesday, December 11, 2024, at 10:00 A.M., Local Prevailing Time
Refer to Section 1, paragraph 1.2 for details**

Submittal Deadline:

**Thursday, January 9, 2025, at 2:00 P.M., Local Prevailing Time
Refer to Section 5, paragraph 5.1 for submittal instructions.**

County's Point-of-Contact for this RFP

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This Request for Proposals (RFP) package consists of 81 pages including this cover page and the Table of Contents page. If the RFP package you received is missing any pages, contact the County of Berks Purchasing Department by telephone at (610) 478-6168.

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SECTION ONE - Introduction and Instruction

1.1. Purpose of this Request for Proposals (“RFP”)

The County of Berks (hereinafter “County”), a municipal corporation with its principal office in Reading, Pennsylvania is soliciting competitive sealed proposals (a “Proposal”) from professional firms (each a “Proposer”) that are interested in and capable of providing older adult daily living center services to consumers with functional impairments of the Berks County Area Agency on Aging (hereinafter “BCAAA”) as further detailed in the Scope of Work of this RFP (inclusive of all tasks, deliverables and products required herein, “Services”). If the County elects to make an award to a Proposer in connection with the Services, the Proposed Form of Agreement and General Conditions included as Attachment A to this RFP as well as all documents incorporated therein shall form the entire agreement between the County and the successful Proposer (“Agreement”).

1.2. Pre-Proposal Conference

A pre-proposal conference will be held through a live broadcast using Microsoft Teams on Wednesday, December 11, 2024, beginning promptly at 10:00 A.M. The Proposers may participate in the pre-proposal conference of this Request for Proposal through a call-in number or utilizing Microsoft Teams. The Microsoft Teams URL may be subject to change, current Microsoft Teams URL for the opening can be located and on the following site under the listing for this specific RFP.

<https://www.berkspa.gov/departments/purchasing/itb-rfp>

The purpose of this meeting is to conduct a question and answer session regarding this RFP package to maximize the Proposer’s understanding as to what is required. Should questions asked and answers given at the pre-proposal conference potentially alter the intent or scope of the RFP, the County will issue an addendum to the RFP to formally modify the RFP. This RFP cannot be modified by, and Proposers shall not rely on, comments made during the pre-proposal conference except as set forth in an addendum.

All Proposers who have received the RFP package from the County will receive notification of the issuance of the addendum.

1.3. Due / Opening Dates

The deadline for the County’s receipt of Proposals is 2:00 P.M., local prevailing time, Thursday, January 9, 2025 (“Proposal Deadline”). The County Controller’s time clock shall be considered the official time. Proposals received after the Proposal Deadline will not be considered. Refer to Section 5, paragraph 5.1 for specific Proposal submittal instructions.

Proposals will be opened publicly at 2:15 PM, on Thursday, January 9, 2025. Proposers may attend the proposal opening through a live broadcast using Microsoft Teams. A summary of Proposals received (Proposer name) will be posted on the Purchasing Department’s page of the County’s website <https://www.berkspa.gov/departments/purchasing/itb-rfp>

This Microsoft Teams URL may be subject to change, current Microsoft Teams URL for the opening can be located and on the following site under the listing for this specific RFP:
<https://www.berkspa.gov/departments/purchasing/itb-rfp>

Refer to Attachment E for detailed instruction on how to participate in the opening through a Microsoft Teams Meeting. *Only the name of each Proposer will be read publicly. All other*

information contained in each Proposal shall be treated as confidential so as to avoid disclosure of contents prejudicial to competing Proposers.

1.4. Amendments to Submitted, Unopened Proposals

Amendments to or withdrawals of submitted, unopened Proposals will only be allowed if requests are received by the County prior to the Proposal Deadline. No amendments or withdrawals will be accepted after the Proposal Deadline unless they are in response to the County's request.

1.5. Required Review of RFP Package

Proposers shall carefully review this RFP for defects, inconsistencies, or ambiguities. Comments concerning defects, inconsistencies or ambiguities must be made in writing and received by the RFP's point-of-contact (see cover page), at least ten (10) business days prior to the Proposal Deadline. This will allow for the issuance of any necessary addenda.

All questions must be in writing and directed to the RFP's point-of-contact. This RFP cannot be modified except by written addenda issued by the County. The decision on whether an addendum is required shall be made by the County in its sole discretion.

If an addendum is issued, it will be provided to all parties who were provided a copy of the RFP by the County's Purchasing Department. It shall ultimately be the responsibility of the Proposer to check and download Addenda from the County's website.

1.6. Receipt of RFP Package

The County's Purchasing Department is the sole authority to provide the RFP package to interested companies or individuals. Proposers who are working from an RFP package obtained from any other source, may be working from an incomplete set of documents. The County assumes no responsibility for an error, omission, or misinterpretation resulting from a Proposer's use of an incomplete RFP package.

Proposers who have received the RFP package from a source other than the County Purchasing Department, are advised to contact the Purchasing Department to provide their Proposer's name, address, telephone number, fax number, and contact name. This will ensure that the Proposer will receive all communication regarding the RFP such as Addenda.

Proposers who have received the RFP package by downloading it from the County's website and have not provided their Proposer's information to the County's Purchasing Department are responsible for checking the website to obtain any Addenda issued for the RFP.

1.7. Preparation Costs

The County will not be responsible for any costs associated with the preparation, submittal, or presentation of any Proposal. If the County rejects a Proposal or does not award an Agreement to any particular Proposer, the Proposer agrees that it will not seek to recover lost or expected profits, Proposal preparation costs or claims for unjust enrichment.

1.8. Public Information

All Proposals and other material submitted become the property of the County and may be returned only at the County's option. Information contained in the Proposals will not be disclosed during the evaluation process. Under Pennsylvania's "Right to Know" laws (65 P.S. §§ 67.101-67.3104), public records are required to be open to reasonable inspection. All Proposal information, including detailed price and cost information, will be held in

confidence during the evaluation process and prior to the time the Agreement is executed by the County. Thereafter, the Proposals will become public information. Requests for photocopies of public records must be made to the Open Records Officer and will be provided to the requestor for a nominal per page fee.

Trade secrets and other proprietary data contained in Proposals may be held confidential, if the Proposer requests, in writing, that the County does so, and if the County agrees, in writing, to do so. Material considered confidential by the Proposer must be clearly identified and the Proposer must include a brief statement that sets out the reasons for confidentiality.

1.9. Reservation of Rights

1.9.1. The County reserves and may, at its sole discretion, exercise the following rights with respect to this RFP and all Proposals submitted pursuant to this RFP:

- 1.9.1.1.** To reject all Proposals and re-issue the RFP at any time prior to execution of the Agreement; to require, in any RFP for similar products and/or services that may be issued subsequent to this RFP, terms and conditions that are substantially different from the terms and conditions set forth in this RFP; or to cancel this RFP with or without issuing another RFP.
- 1.9.1.2.** To reject any Proposal if, in the County's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP, the Proposer does not meet the qualification requirements set forth in Section 5 herein, or it is otherwise in the best interest of the County to reject the Proposal.
- 1.9.1.3.** To supplement, amend, substitute, or otherwise modify this RFP at any time prior to the execution of the Agreement.
- 1.9.1.4.** To accept or reject any or all of the items in any Proposal and award the Agreement for the whole or only a part of any Proposal if the County determines, in its sole discretion, that it is in the County's best interest to do so.
- 1.9.1.5.** To reject the Proposal of any Proposer that, in the County's sole judgment, has been delinquent or unfaithful in the performance of any contract with the County, is financially or technically incapable, or is otherwise not a responsible Proposer.
- 1.9.1.6.** To waive any informality, defect, non-responsiveness, and/or deviation from this RFP that is not, in the County's sole judgment, material to the Proposal.
- 1.9.1.7.** To permit or reject, at the County's sole discretion, amendments (including information inadvertently omitted), modifications, alterations, and/or corrections to Proposals by one or more of the Proposers following Proposal submission.
- 1.9.1.8.** To request that one or more of the Proposers modify their Proposals or provide additional information.
- 1.9.1.9.** To request additional or clarifying information from any Proposer at any time, including information inadvertently omitted by a Proposer.
- 1.9.1.10.** To require that Proposers appear for interviews and/or presentations of their Proposals at County offices.

- 1.9.1.11. To inspect programs similar in type and scope to the work sought in this RFP and/or to inspect the Proposer’s facilities to be used in furnishing goods or services required by the RFP.
- 1.9.1.12. To conduct such investigations as the County considers appropriate with respect to the qualifications of any Proposer and with respect to the information contained in any Proposal.
- 1.10. Any and all protests related to this solicitation are subject to the County of Berks Protest Policy which is located on the County of Berks Purchasing Department website: <https://www.berkspa.gov/departments/purchasing/itb-rfp>
- 1.11. **RFP Timeline**
Following is the County’s estimated timeline for the RFP process:

Issue RFP	Monday, November 25, 2024
Pre-Proposal Conference	Wednesday, December 11, 2024
Cutoff for Submission of Written Questions (10 business days before due date)	Monday, December 23, 2024
Deadline for Submission of Proposals	Thursday, January 9, 2025
Opening of Submitted Proposals	Thursday, January 9, 2025
County’s Review of Proposals	January 10, 2025 to February 7, 2025
Notify Short List Firms	Monday, February 10, 2025
Interview Short List Firms	February 17 – February 21, 2025
Issue Notice of Contract Award	Friday, March 21, 2025
Commencement of Work	Tuesday, July 1, 2025

SECTION 2 – Method of Vendor Selection

2.1. Interviews with Short List Firms

The County may, in its sole discretion, elect to conduct interviews with one or more Proposers. The purpose of an interview will be to clarify and assure the Proposer’s full understanding of, and responsiveness to, the solicitation requirements. Revisions to a Proposal may be permitted after submission and before the County’s execution of the Agreement for the purpose of obtaining best and final offers with the County’s approval. The individual identified in the Proposal as the Program Manager, must be in attendance at the interview.

2.2. Right to Negotiate

After the County’s completion of the Proposal evaluation process, including any interviews held with Proposers during the evaluation process, the County may elect to initiate negotiations with one or more Proposers for modification of any component of the Agreement, including, without limitation, the scope of services, price or schedule for completion. The option of whether or not to initiate or terminate negotiations rests solely with the County, which may be exercised at any time.

2.3. Award of Contract

- 2.3.1. If the County elects to award an Agreement pursuant to this RFP, it intends to award the Agreement to the responsible and responsive Proposers whose Proposals are determined to provide the best overall value to the County. The County intends to

award a three (3) year Agreement term with the option of extending the term of the Agreement for two (2) additional one (1) year periods upon the mutual agreement of the parties. The Vendor should be prepared to begin work on July 1, 2025.

- 2.3.2. The County reserves the right, upon notice to the Proposer, to extend the term of the Agreement for up to three (3) months upon the same terms and conditions. This will be utilized to prevent a lapse in agreement coverage and only for the time necessary, up to three (3) months, to enter into new Agreement and to ensure a smooth transition process for consumers.
- 2.3.3. This option provision shall be within the sole and exclusive discretion of the County to exercise and shall not obligate the County to extend the Agreement.
- 2.3.4. Amounts of services to be purchased by County in any additional twelve (12) month period shall be dependent upon the availability of funds and participant demand.

SECTION 3 - Standard Contract Information

3.1. Standard Agreement Provisions

The Agreement resulting from the award of this RFP shall be governed by the terms and conditions set forth in the Proposed Form of Agreement and General Conditions set forth in Attachment A, attached hereto and incorporated herein. Proposers must detail in their Technical Proposal their reasons for objection to any part of RFP or Proposed Form of Agreement and General Conditions. Hindrance of the award process due to the extent of a Proposer's objection to the form or substance of the RFP or Proposed Form of Agreement and General Conditions may have a negative impact on the County's assessment of that Proposal.

3.2. Agreement Content

The Agreement will incorporate this RFP, the Proposer's Proposal, and any additional information deemed necessary as a result of the negotiations held with the Vendor.

3.3. Confidentiality of Protected Health Information:

- 3.3.1. To the extent applicable, the parties hereto agree to fully comply with the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and all amendments thereto and regulations promulgated thereunder (collectively, "HIPAA"), as well as any other applicable laws or regulations concerning the privacy and security of health information. The successful Proposers agree at all times to treat any protected health information (as defined by HIPAA), created by or disclosed or otherwise made available to the successful Proposer in connection with the Agreement, in accordance with all federal, state and local laws and regulations regarding the confidentiality of protected health information. Without limitation to other rights and remedies under the Agreement or afforded by law, County may immediately terminate an Agreement if it determines that there has been a material breach of this provision.
- 3.3.2. To the extent that County meets the definition of a "Covered Entity" or "Business Associate" (as such terms are defined under HIPAA) and the successful Proposer/Vendor is determined by County to meet the definition of a "Business Associate" or "Subcontractor" (as such terms are defined under HIPAA) of County, the successful Proposer and County shall enter into a HIPAA Business Associate

Agreement in a form satisfactory to County as set forth in Attachment B, attached hereto and incorporated herein, which shall govern the treatment of any protected health information created, received, transmitted, or maintained by successful Proposer on behalf of the County.

SECTION 4 – Scope of Work

4.1. Definitions

- 4.1.1. **Caregiver** - A person who has assumed the primary responsibility for the care of a person with a functional impairment who is sixty (60) years of age or older, or who is eighteen (18) years of age or older and has post-stroke dementia, Parkinsonism, or a dementia-related disease such as Alzheimer's or other organic brain syndrome.
- 4.1.2. **Consumer** - A resident of this Commonwealth with functional impairment who meets the following criteria:
 - 4.1.2.1. Sixty (60) years of age or older.
 - 4.1.2.2. The person receives services in an older adult daily living center.
 - 4.1.2.3. The person requires assistance to meet personal needs and to perform basic daily activities as determined by an intake screening process.
- 4.1.3. **Communicable disease** - An illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person to a susceptible host, either directly or indirectly through an intermediate plant, animal host or the environment.
- 4.1.4. **Functional impairment** - A professionally determinable state or condition attributable to a range of physical, mental, developmental, psychosocial, neurological, or other conditions, in which the capacity for independence is limited and the ability to perform or carry out activities of daily living is impeded.
- 4.1.5. **Responsible party** - A person who is responsible for making decisions on behalf of the client.

4.2. Aging Program Directive (APD), Federal & State Regulatory Reference

- 4.2.1. Vendors providing services outlined in the Scope of Work shall comply with all federal and state directives listed below:
 - 4.2.1.1. Chapter IV: OPTIONS.
 - 4.2.1.2. Pennsylvania Code, Title 6, Chapter 15: Protective Services for Older Adults.
 - 4.2.1.3. Pennsylvania Code, Title 6, Chapter 11, Older Adult Daily Living Centers.
 - 4.2.1.4. Pennsylvania Department of Aging Program Directives:

- 4.2.1.4.1. 15-03-01 Policies and Standards for the Department of Aging Food Safety and Menu Compliance Monitoring.
- 4.2.1.4.2. 15-03-02 Policies and Standards for the Department of Aging Nutrition Work.

4.2.2. This Scope of Work is subject to change based on changes to the above directives.

4.3. Background

4.3.1. Utilizing the FY 2022/2023 Block Grant as a basis, the County of Berks estimates it will have an aggregate dollar figure of Forty Thousand Dollars and Zero Cents (\$40,000.00) for all services identified herein.

4.4. Program Goals and Objectives

4.4.1. An Older Adult Daily Living Center (hereinafter “OADLC”) provides therapeutic, rehabilitative, and developmental activities within a protective setting for functionally disabled adults who are not able to function in other less structured environments, such as a senior center. An OADLC shall provide group care and supervision in a safe, comfortable environment in which services are offered by professional and paraprofessional staff to maintain a person in the community and increase access to recreational and social stimuli and provide respite to caregivers.

4.4.2. OADLC services are provided through the OPTIONS program as administered by the BCAA. The services in this program are provided to authorized consumers aged sixty plus (60+) to assist them in maintaining independence with the highest level of functioning in the community and delay the need for more costly care/services. This service is not an entitlement and all other resources (individual, local, state and/or federal) shall be considered and utilized prior to BCAA authorization of services.

4.5. Scope of Work

4.5.1. General Requirements.

4.5.1.1. All Vendors shall be licensed by the Pennsylvania Department of Aging and all services as an OADLC shall be provided in strict conformance with Pennsylvania Code, Title 6, Aging, Chapter 11, Older Adult Daily Living Centers. Failure to maintain licensure shall result in the termination of the contract with BCAA.

4.5.1.1.1. Vendor shall post their current Pennsylvania Department of Aging license in a visible location within the OADLC.

4.5.1.2. Services shall be provided on a premises operated by the Vendor and having a current Certificate of Occupancy and be Americans with Disabilities Act (ADA) compliant as specified in Pennsylvania Code, Title 6, Aging, Chapter 11, Older Adult Daily Living Centers.

4.5.1.3. OADLC shall be open a minimum of five (5) days per week and have publicly stated hours of at least nine (9) hours per day. Hours shall be flexible enough to accommodate consumers and their families.

4.5.1.3.1. The Vendor shall provide consumers with daily living skills instruction and socialization and plan the day care facility in such a manner that program activity objectives shall be reinforced, and relevant information shall be communicated to consumers.

4.5.1.3.2. In accordance with PA Code Title 6, Aging, Chapter 11, Section 11.104 an individual care plan shall be developed for each consumer within thirty (30) calendar days following admission and services provided shall be consistent with the care plan authorized by BCAA.

4.5.2. Personnel.

4.5.2.1. Vendor shall adhere to the following staff requirements:

4.5.2.1.1. Have sufficient administrative, professional, and direct service staff employed to assure the efficient and effective provision of service during the term of the contract.

4.5.2.1.2. Maintain enough personnel to ensure a staff to consumer ratio of at least one (1) full-time staff person, or equivalent, to seven (7) consumers.

4.5.2.1.3. A Registered Nurse or Licensed Practical Nurse, who is under the direction of a licensed professional nurse, shall be present at the OADLC to meet mandated nursing services as well as the direct care needs of the consumers.

4.5.2.1.4. The Vendor shall notify BCAA of changes at the administrative level in advance, if known, or immediately upon such change.

4.5.2.1.5. The Vendor shall maintain sound personnel policies structured to minimize turnover that would adversely affect the delivery of service.

4.5.2.1.6. Staff shall be available to accept phone communication during normal business hours.

4.5.2.1.7. Volunteer staff cannot be considered direct care workers.

4.5.3. Criminal History Record Check.

4.5.3.1. Vendor shall require applicants to submit to a Pennsylvania State Police background check using the PA Access to Criminal History at <https://epatch.pa.gov/home>. Substitute clearances are not acceptable. The report shall be dated within one (1) year prior to their employment start date.

4.5.3.2. Applicants applying for employment as a member of the office staff and owner/owners are also required to obtain a criminal history report.

4.5.3.3. If an applicant supplies their own Pennsylvania State Police background check, Vendor shall then access and print the report from <https://epatch.pa.gov/home>,

and place it into the personnel file. The report shall be dated within one (1) year prior to their employment start date.

- 4.5.3.4.** In addition, applicants who have not been Pennsylvania residents for two (2) consecutive years, without interruption and immediately preceding the date of application for employment, shall obtain a Federal Bureau of Investigation (FBI) background check. Applicants can register online at <https://www.identogo.com/>
- 4.5.3.5.** Staff may not directly work with consumers until the appropriate criminal history clearance(s) are received and documented in their personnel file.
- 4.5.4.** Physical Examination, Health Screen and Purified Protein Derivative (PPD) Test.

 - 4.5.4.1.** Staff persons who come into direct contact with consumers shall comply with federal, state, and local health requirements related to physical examinations and communicable disease screenings.
 - 4.5.4.2.** Staff persons shall have a physical examination within twelve (12) months prior to employment and every two (2) years thereafter signed and dated by a physician or a nurse practitioner. The physical examination shall be completed prior to the first day of employment.
 - 4.5.4.3.** A Mantoux Intracutaneous PPD test or a QuantaFeron test shall be administered to any staff person, with direct consumer contact, within two (2) years prior to employment. The documentation of the test shall include the date administered, the date read and the results.
 - 4.5.4.4.** Following initial testing, workers shall update the required Tuberculosis skin test (TB) screen at least every two (2) years including documentation that the individual is free from active M. tuberculosis.
 - 4.5.4.5.** The pre-employment PPD test shall be a two-step tuberculin skin test, or a QuantaFeron test with a second test one (1) to three (3) weeks after the first test, if the new staff person has had:

 - 4.5.4.5.1.** no previous PPD test;
 - 4.5.4.5.2.** an interval of more than twelve (12) months since his/her previous negative PPD test; or
 - 4.5.4.5.3.** a previous undocumented positive PPD test.
 - 4.5.4.6.** If the results of a documented PPD test are positive at any time, it shall be followed by an examination by a physician and chest x-ray (if indicated) and any appropriate treatment prescribed. An infected staff person shall receive follow-up care as required by a physician and shall not begin or resume service to consumers until discharged by the physician as no longer contagious.
 - 4.5.4.7.** Any staff person, with a previously documented positive PPD test, shall be screened for signs or symptoms of the disease by a physician or a nurse practitioner. The health care professional must clear the staff person for

employment and identify a follow-up plan. At a minimum, this staff person shall have a biennial TB screening and work clearance by the health care professional.

4.5.5. Communicable diseases.

- 4.5.5.1.** When caring for consumers with communicable diseases, Vendor shall follow procedures recommended in the Centers for Disease Control (CDC) guidelines and Occupational Safety and Health Administration (OSHA) regulations.
- 4.5.5.2.** Vendor(s) shall supply appropriate protective articles such as, but not limited to, aprons, gloves, and masks.
- 4.5.5.3.** Based on CDC guidelines, Vendor shall develop a written policy regarding communicable diseases.

4.5.6. Training.

- 4.5.6.1.** Employee training shall be held in accordance with Pennsylvania Code, Title 6, Aging, Chapter 11, Older Adult Daily Living Centers § 11.33.
- 4.5.6.2.** All training shall be documented, including the content, name of trainer, date, length of training and names of staff who attend.
- 4.5.6.3.** If training is provided by an outside agency, documentation of the training, including a copy of the certificate issued, shall be placed in each employee's personnel file.

4.5.7. Incident/Complaint Procedures.

- 4.5.7.1.** OADLC shall be responsible for reporting unusual incidents to the Department of Aging, Division of Licensing as defined in 6 PA Code Chapter 11, Section 11.3 - Definitions and to submit the reports within the timeframes outlined in 6 PA Code Chapter 11, Section 11.16 - Reporting of Unusual Incidents.
- 4.5.7.2.** An incident/complaint is an occurrence of injury and/or damage to persons or property or other significant untoward occurrence identified and reported by the consumer, consumer's family, worker, or Vendor.
- 4.5.7.3.** All incidents/complaints regarding OPTIONS consumers shall be documented and reported to BCAA within two (2) business days of the occurrence.
- 4.5.7.4.** Vendor shall investigate each incident or complaint and submit a written disposition of the investigation and corrective action to BCAA within five (5) business days of the occurrence.
- 4.5.7.5.** Vendor shall document the resolution of the incident/complaint at the time the incident/complaint is resolved but no later than thirty (30) days after initial notification of the incident/complaint to BCAA. This documentation shall be retained in the consumer's file and a copy shall be sent to BCAA.

- 4.5.7.6.** Vendor and BCAA shall monitor consumer incidents/complaints for trends. If patterns or trends are identified, BCAA and Vendor shall take appropriate timely action to make system corrections.
- 4.5.8. Referrals.**
- 4.5.8.1.** Consumer eligibility for OADLC services is established through a comprehensive assessment conducted by the BCAA.
- 4.5.8.2.** As a result of this assessment, an individual care plan shall be developed for each consumer. Each care plan shall be developed with the informed consent, approval, and assistance of the consumer and/or responsible party, who shall have the opportunity to identify needed service activities, days, and hours of service, etc.
- 4.5.8.3.** The BCAA Care Manager shall identify service parameters (maximum days/week). The approved care plan shall be forwarded to the Vendor for implementation. The Vendor shall then schedule service with the consumer/family in conformance with the approved care plan.
- 4.5.8.4.** Vendor shall have a system set up whereby recipients can pay privately for days beyond those approved by the BCAA, if recipients so desire. Vendor shall not charge OPTIONS consumers who purchase private pay services more than the rate paid by BCAA.
- 4.5.8.5.** Vendor shall notify the consumer's Care Manager if a consumer is hospitalized.
- 4.5.9. Undelivered Service.**
- 4.5.9.1.** Vendor shall notify the consumer's Care Manager if services are not provided on the days prescribed.
- 4.5.9.2.** All notification to the consumer's Care Manager regarding undelivered service shall be documented.
- 4.5.9.3.** No service shall be provided without the prior authorization of BCAA. Payments shall begin no sooner than the date of the service plan for services as specified and approved by BCAA.
- 4.5.10. Consumer Files.**
- 4.5.10.1.** Individual consumer files shall be maintained by Vendor in a confidential, secure manner. Vendor shall maintain a standardized record-keeping system for consumer files as specified in Pennsylvania Code, Title 6, Aging, Chapter 11, Older Adult Daily Living Centers §11.101 and HIPPA.
- 4.5.10.2.** Vendor shall document daily attendance for OADLC consumers. At a minimum, documentation of each visit made by a consumer shall contain the consumer's arrival and departure times and, when stipulated in the service order, whether the consumer received a bath.

- 4.5.10.3.** Consumer files shall contain, in addition to documentation required in the OADLC licensing regulations, hard copies of:
 - 4.5.10.3.1.** BCAAA registration form;
 - 4.5.10.3.2.** BCAAA service order with the current prescription; and
 - 4.5.10.3.3.** documentation of communication with the Care Manager and caregiver when there are changes in the consumer's condition or attendance.
- 4.5.11.** Consumer Confidentiality.
 - 4.5.11.1.** Security of consumer files shall be maintained.
 - 4.5.11.2.** Every precaution shall be pursued to maintain confidentiality of consumer information, particularly when sharing with other agencies.
 - 4.5.11.3.** Only those portions of the care plan, which pertain to a specific service or vendor, shall be communicated to the appropriate parties involved in providing service to the consumer.
 - 4.5.11.4.** Consumer permission shall be obtained in writing, to share this information.
- 4.5.12.** Policies and Procedures.
 - 4.5.12.1.** The Vendor's operations and personnel policies and procedures manual shall be accessible to all Vendor employees or employees shall be issued a copy of each manual.
 - 4.5.12.2.** The Vendor shall inform consumers and responsible party, in writing, of their rights that include confidentiality, non-discrimination, grievance process, and hearings and appeals. Vendor shall post in a prominent place in the center the list of consumer rights in English and other predominant language of the community.
 - 4.5.12.3.** At the time of intake, the OADLC shall provide the consumer and responsible parties with the name, address, and telephone number of the local representatives of the Long-Term Care Ombudsman Program.
- 4.5.13.** Activities.
 - 4.5.13.1.** Activities shall occur every day in which the Vendor is open.
 - 4.5.13.2.** The following specialized services shall include, but not be limited to, the following:
 - 4.5.13.2.1.** Assist in performing the basic tasks of everyday living, including personal hygiene, bathing, dressing & undressing, grooming, toileting, bladder and bowel management, transferring in and out of bed or chair, nutrition education, eating, social skills, safety training and use of leisure time.

- 4.5.13.2.2.** Provide a planned program of social, recreational, and developmental activities geared toward meeting the needs of the individual consumers within the day care facility, and toward improving or maintaining the functioning level of consumers.
- 4.5.13.2.3.** Refer to and advocate for specialized health, therapeutic, rehabilitative, or social services.
- 4.5.13.2.4.** Provide for nutritious meals and snacks as defined under PA Code Title 6 Aging, Chapter 11, Section 11.152.
- 4.5.13.2.5.** Work with the consumer, family, caretaker, or other appropriate agency to arrange for transportation.

4.5.14. Vendors shall be responsible for:

- 4.5.14.1.** Establishing procedures for assuring safe and appropriate release from the OADLC site to the care of a responsible person at the end of each day.
 - 4.5.14.1.1.** If a consumer cannot be released to a caregiver or to the consumer's emergency contact, she/he shall be returned to the OADLC site to a designated staff person.
- 4.5.14.2.** Informing the Care Manager when there are changes in a consumer's physical or mental condition, the consumer's support network or the consumer's need for service.
- 4.5.14.3.** Contacting the consumer's Care Manager if termination of service is requested either by the consumer or by the Vendor.

4.5.15. Lunch Meals.

- 4.5.15.1.** A lunch shall be served Monday through Friday.
- 4.5.15.2.** Meals shall contain at least one-third (1/3) of the current Recommended Dietary Allowances (RDA) / Adequate Intakes (AI), as established by the Food and Nutrition Board of the National Research Council. Each meal shall also meet the Dietary Guidelines, as per PA Code Title 6, Aging, Chapter 11, Section 11.152 as may be amended during the period of the contract.
- 4.5.15.3.** Cold food shall be kept at or below forty-five degrees (45°) Fahrenheit. Hot food shall be kept at or above one hundred forty degrees (140°) Fahrenheit. Frozen food shall be kept at or below zero degrees (0°) Fahrenheit.
- 4.5.15.4.** Written daily menus shall be prepared and posted in a location visible to the consumers. Menus shall be posted at least one (1) program day prior to the menu date. Written menus shall be followed. Written menus shall be retained for at least two (2) months.

- 4.5.15.5.** At least one (1) complete meal shall be provided if the consumer is at the center for four (4) or more hours. If a consumer is at the center for more than six (6) hours, a nutritional snack shall also be provided.
- 4.5.15.6.** Each meal served shall contain at least one (1) item from the dairy, protein, fruits and vegetables and grain food groups, unless medically contraindicated for individual consumers.
- 4.5.15.7.** The ethnic and religious preferences of consumers shall be considered when planning menus.
- 4.5.15.8.** Food shall be protected from contamination while being stored, prepared, served, and transported.
- 4.5.15.9.** Utensils used for eating, drinking, preparation and serving of food or drink shall be washed after each use by a mechanical dishwasher or by a method approved by the Department of Environmental Resources.
- 4.5.15.10.** Mechanical dishwashers shall use hot water temperatures exceeding one hundred forty degrees (140°) Fahrenheit in the wash cycle and one hundred eighty degrees (180°) Fahrenheit in the final rinse cycle or shall be of a chemical sanitizing type approved by the National Sanitation Foundation.
- 4.5.15.11.** Meals shall be attractive, palatable, tasty, and appealing to the food preferences of consumers.
- 4.5.15.12.** Special diet meals (e.g., low-sodium, diabetic, bland, low cholesterol, low fat) shall be provided to consumers upon request of consumer's physician and/or BCAAA.
- 4.5.15.13.** No food prepared in a private home or processed in a place other than a food processing establishment shall be used in the preparation of meals unless the preparation and processing facility is regulated by an appropriate local County Health Department.
- 4.5.15.14.** Preparation, processing and serving sites shall comply with the Environmental Resources Food Establishment Regulations as acted upon May 23, 1945, P.L. 926 (25 Pa. Code 151.1 et. seg.) relating to sanitation standards.
- 4.5.15.15.** Health Department inspection reports of Vendor facilities shall be provided to BCAAA upon request.
- 4.5.15.16.** If meals are prepared on-site, Vendor shall be currently licensed by the local County Health Department.
- 4.5.15.17.** Meals provided to OPTIONS consumers shall not be submitted for reimbursement under the Child and Adult Care Food Program (CACFP).

4.5.16. Physical Site.

- 4.5.16.1.** Vendors shall provide a safe, clean, and orderly environment that allows opportunities for a variety of learning experiences and encourages socialization and involvement in the program. Vendors shall also provide an environment that allows opportunities for a variety of learning experiences and encourages socialization and involvement in the program.
- 4.5.16.2.** Vendors serving consumers with a physical disability or impediment, blindness, a visual impairment, deafness, or a hearing impairment shall have accommodations to ensure safety and accessibility for entrance to, movement within and exit from the OADLC.
- 4.5.16.3. Indoor Floor and Other Space.**

 - 4.5.16.3.1.** An OADLC that is co-located in a center housing other services shall have its own separate identifiable space during the hours of operation.
 - 4.5.16.3.2.** An OADLC which is co-located with an adult developmental training facility operated or licensed by the Departments of Human Services or Education may share space with the facility.
 - 4.5.16.3.3.** The OADLC shall have sufficient space to accommodate the full range of program activities and services.

 - 4.5.16.3.3.1.** The OADLC shall provide at least fifty (50) square feet of indoor program space for each consumer. Indoor floor space shall be measured wall to wall, including space occupied by equipment, temporary storage, and furnishings. Space occupied by lavatories, dining areas, loading docks, kitchens, hallways, offices and first aid rooms cannot be included unless it is documented that the space is used for programming for at least fifty percent (50%) of each program day. Permanent storage space shall not be included in the indoor floor space.
 - 4.5.16.3.3.2.** Office space shall be available for OADLC staff persons to work effectively.
 - 4.5.16.3.3.3.** Storage space shall be available for program and operating supplies.
 - 4.5.16.3.3.4.** There shall be private space available for confidential consultation with or services to, or both, the consumers in the OADLC and others as necessary.
- 4.5.16.4.** A specified loading or parking area, or both, shall be available for the safe daily arrival and departure of consumers.
- 4.5.16.5.** Poisonous Materials.

4.5.16.5.1. Poisonous materials shall be kept in a cabinet, closet, cupboard, or container that is locked or placed in a location which is inaccessible to consumers.

4.5.16.5.2. Poisonous materials shall be kept separate from food, food preparation surfaces and dining surfaces.

4.5.16.6. Sources of Heat.

4.5.16.6.1. Hot water pipes, fixed space heaters, radiators, wood, and coal burning stoves, fireplaces and other sources of heat exceeding one hundred twenty degrees (120°) Fahrenheit that are accessible to consumers shall be equipped with protective guards or insulation to prevent consumers from coming in contact with the heat source.

4.5.16.7. Sanitation.

4.5.16.7.1. Clean and sanitary conditions shall be maintained in all areas of the OADLC.

4.5.16.7.2. Evidence of infestation of insects or rodents in the OADLC shall not be present.

4.5.16.7.3. Garbage shall be removed from inside the OADLC daily and from outside the building at least once per week.

4.5.16.7.4. Trash in the bathroom, dining and kitchen areas shall be kept in receptacles made of plastic, metal or other easily cleaned materials that prevent the penetration of insects and rodents.

4.5.16.7.5. Trash and garbage outside the OADLC shall be kept in closed receptacles that prevent the penetration of insects and rodents.

4.5.16.7.6. OADLCs that are not connected to a public sewer system shall have a written sanitation approval for their sewage system by the sewage enforcement official for the municipality in which the OADLC is located.

4.5.16.8. Ventilation.

4.5.16.8.1. OADLC communal areas, dining areas, kitchens and lavatories shall be ventilated by operable windows or mechanical ventilation, such as fans.

4.5.16.8.2. There shall be no smoking in the OADLC.

4.5.16.9. Lighting.

4.5.16.9.1. Rooms, hallways, interior stairways, outside steps, interior and outside doorways, porches, ramps, and fire escapes shall be lighted to ensure consumer safety and to avoid accidents and compensate for visual losses.

4.5.16.10. Surfaces.

4.5.16.10.1. Floors, walls, ceilings, and other surfaces shall be in good repair.

4.5.16.10.2. Floors, walls, ceilings, and other surfaces shall be free of hazards, such as loose or broken window glass, pointed projections, loose or cracked floor coverings.

4.5.16.11. Running Water.

4.5.16.11.1. An OADLC shall have hot and cold running water in all bathrooms and kitchen areas.

4.5.16.11.2. Hot water temperatures in areas accessible to consumers shall not exceed one hundred thirty degrees (130°) Fahrenheit.

4.5.16.11.3. OADLCs that are not connected to a public water system shall comply with 25 Pa. Code Chapter 109 (relating to safe drinking water). Written certification of water tests shall be kept with the OADLC's records.

4.5.16.12. Indoor Temperature.

4.5.16.12.1. Indoor temperature shall be at least seventy degrees (70°) Fahrenheit when consumers are in the OADLC.

4.5.16.12.2. Whenever indoor temperature exceeds eighty degrees (80°) Fahrenheit, mechanical ventilation, such as fans, or air conditioning is required.

4.5.16.13. Telephone.

4.5.16.13.1. OADLC shall have an operable telephone with an outside line to which OADLC staff persons and consumers have reasonable access. Subject to rules established by the OADLC, consumers may make and receive calls in privacy, or have calls made for the consumer, if necessary.

4.5.16.14. Emergency and Advocacy Telephone Numbers.

4.5.16.14.1. OADLC shall post on or by each telephone in the OADLC with an outside line the telephone numbers of the nearest hospital, police department, fire department, ambulance, crisis intervention unit and poison control center.

4.5.16.15. Screens, Windows, and Doors.

4.5.16.15.1. Windows, including windows in doors, shall be screened when windows or doors are open.

4.5.16.15.2. Screens, windows, and doors shall be in good repair.

4.5.16.16. Handrails and Railings.

4.5.16.16.1. Ramps, interior stairways and outside steps exceeding two (2) steps shall have well-secured handrails.

4.5.16.16.2. A porch that has over an eight-inch (8") drop shall have a well-secured railing.

4.5.16.17. Non-skid Surfaces.

4.5.16.17.1. Interior stairs and outside steps shall have a nonskid surface.

4.5.16.18. Landings.

4.5.16.18.1. A landing shall be provided beyond each interior and exterior door that opens directly into a stairway.

4.5.16.18.2. A landing shall be at least as wide as the stairs leading to the landing.

4.5.16.18.3. A landing shall be at least three feet (3') feet long.

4.5.16.19. Furniture and Equipment.

4.5.16.19.1. Furniture shall be nonhazardous, clean, and sturdy. Chairs with arms shall be available for consumers who need them.

4.5.16.19.2. Furniture and equipment shall be appropriate for the age, size, and disabilities of the individual consumers.

4.5.16.20. Storage of Personal Belongings.

4.5.16.20.1. Space shall be provided for hanging hats, coats, and the storage of personal belongings.

4.5.16.21. Bathrooms.

4.5.16.21.1. There shall be one (1) toilet and one (1) sink for every fourteen (14) consumers served at one time in an OADLC.

4.5.16.21.2. If the OADLC serves fifteen (15) or more consumers at one time, there shall be two (2) separate and distinct bathrooms.

4.5.16.21.3. For an OADLC with a consumer who has a physical disability, at least one (1) toilet and one (1) sink shall be constructed so that the consumer with a physical disability has access and use. The toilet stall shall be large enough to allow for transfer from a wheelchair to the toilet and to accommodate the consumer and an OADLC staff person.

4.5.16.21.4. Each bathroom shall have a sink, wall mirror, soap container, soap, toilet paper, individual clean paper or cloth towels or a blow dryer for hands and a trash receptacle.

4.5.16.21.5. Privacy shall be provided for toilets by partitions, doors, or curtains.

4.5.16.22. First Aid.

4.5.16.22.1. An OADLC shall have a first aid area that is separated by partition, privacy screen or other means from program areas.

4.5.16.22.2. The first aid area shall have a bed or reclining chair or cot, a blanket, and a pillow.

4.5.16.22.3. Each floor of the OADLC shall have a first aid kit accessible to OADLC staff.

4.5.16.22.3.1. The first aid kits shall contain antiseptic, an assortment of adhesive bandages, sterile gauze pads, tweezers, tape, and scissors.

4.5.16.22.3.2. A first aid manual shall be kept with each first aid kit.

4.5.16.23. Elevators.

4.5.16.23.1. If an elevator is present in the OADLC, the OADLC shall maintain a valid certificate of operation from the Pennsylvania Department of Labor and Industry with its records.

4.5.16.24. Exterior Conditions.

4.5.16.24.1. Outside walkways shall be free from ice, snow, leaves, equipment, and other hazards.

4.5.16.24.2. The outside of the building and the OADLC grounds shall be well maintained and in good repair.

4.5.16.25. Emergency Preparedness.

4.5.16.25.1. Emergency arrangements shall be made by the OADLC's staff in consultation with relevant organizations, such as the fire department, for addressing in-house emergencies affecting the OADLC. At a minimum, the following components of an emergency plan shall be developed:

4.5.16.25.1.1. Specific personnel within the OADLC shall be designated and trained to take charge during emergencies at the OADLC.

4.5.16.25.1.2. Written notices shall be posted in conspicuous locations throughout the OADLC; notices shall include:

4.5.16.25.1.2.1. Telephone numbers for the fire department, police, and ambulance services; and

4.5.16.25.1.2.2. OADLC evacuation procedures.

- 4.5.16.25.1.3. Fire drills shall be held at least semi-annually, in cooperation with the fire department. If it is not possible to perform fire drills in conjunction with the fire department, OADLCs shall conduct their own fire drills. Written policies on how fire drills are conducted shall be developed and implemented. Quarterly fire drills shall be held for OADLCs with multiple floor levels or a complicated physical layout. Exit maps for the OADLC shall be written in a clear, concise manner and posted in areas so they can be referenced easily. Fire drill trainings shall include an explanation, and review of building exits, evacuation, and a log documenting each drill.
- 4.5.16.25.1.4. Accommodations for people with disabilities shall be prearranged should an emergency occur, and evacuation of the OADLC is necessary. This plan shall be implemented during fire drills and shall be part of the written policies.
- 4.5.16.25.1.5. A written record of all OPTIONS consumer injuries occurring at the OADLC that require medical transport shall be properly documented and transmitted to BCAA the same day and the insurance carriers notified within twenty-four (24) hours of the incident.
- 4.5.16.25.1.6. When BCAA provides State or Federal funds for the purchase of fixed assets, and such property is stolen, lost, vandalized or otherwise damaged or destroyed for reasons other than normal wear and tear, a written record shall be submitted to BCAA, and the appropriate insurance carrier notified within twenty-four (24) hours.

4.6. Qualifications / Experience

4.6.1. Proposing Firm

- 4.6.1.1. The proposing firm shall at minimum:
 - 4.6.1.1.1. have three (3) years' experience providing OADLC Services in Pennsylvania;
 - 4.6.1.1.2. have demonstrated past performance related to the ability to meet schedules and deadlines; and
 - 4.6.1.1.3. have demonstrated past exceptional performance related to developing and implementing programming.
- 4.6.1.2. It is important to note that "proposing firm" refers to the company that would enter into the Agreement with the County. To be considered, the proposing firm must meet or exceed the benchmarks set forth above on its own merit. The experience and qualifications of firms that the proposing firm will partner with in the performance of this Program, cannot be used to bring a proposing firm's less

than required experience and qualifications up to the benchmark. Also important to note is that the County is not interested in a joint venture Program but prefers to enter into the Agreement with a single entity.

- 4.6.1.3. Each proposing firm shall certify that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania or federal government. If the proposing firm cannot so certify, then it shall submit a written explanation of why such certification cannot be made.

4.6.2. Program Team

- 4.6.2.1. The program manager shall at minimum:

- 4.6.2.1.1. have an average of three (3) years' experience providing OADLC Services in Pennsylvania;
- 4.6.2.1.2. on past programs have demonstrated skills, technical knowledge, and administrative capability to serve all the requirements of the proposed program scope of work, and
- 4.6.2.1.3. possess certifications, licenses, and proficiency in the application of requirements and guidelines as applicable.

- 4.6.2.2. The Program team shall at minimum:

- 4.6.2.2.1. have three (3) years' OADLC Service experience; and;
- 4.6.2.2.2. on past programs demonstrated skills, technical knowledge, and administrative capability to serve all the requirements of the proposed program scope of work.

4.7. Program Timeline

The successful Proposer(s) will be required to begin the work by July 1, 2025 upon receipt of the County's issuance of the notice to proceed.

SECTION 5 - Proposal Format and Content

5.1. Submission of Proposal

- 5.1.1. Proposals shall be submitted with one (1) original and one (1) electronic copy of the Proposal and Price Proposal on a CD or thumb drive to: County of Berks, c/o County Controller, Berks County Services Center, 633 Court Street, 12th Floor, Reading, PA, 19601. The original Proposal shall be marked "original" and the electronic copy of the Proposal shall be a complete copy of the original including all attachments and appendixes.
- 5.1.2. Proposals shall be submitted in two (2) parts – a "Technical Proposal" and "Price Proposal". The Technical Proposal shall cover the technical aspects of the Services but shall not include any mention of proposed fees or out-of-pocket expenses. The Price Proposal shall include all details as required under Section, Clause 5.12. The Technical Proposal and the Price Proposal shall be submitted in separate sealed, opaque

envelopes or containers with the words “Sealed Technical Proposal – RFP #24-35-GR” and “Sealed Price Proposal – RFP #24-35-GR” clearly printed on the outside of each package. Proposals received via email or facsimile will not be considered.

- 5.1.3. Each Proposal section enumerated in paragraph 5.3 – 5.12 must be clearly identified and tabbed in the submitted Proposal.

5.2. Proposal Format

The County discourages overly lengthy and costly proposals; however, Proposers should follow the format set out herein and provide all of the information requested. For a Proposal to be considered, Proposers must follow the instructions outlined in this RFP.

5.3. Transmittal Letter

Proposals shall include a brief letter which provides the Proposer’s name; address of the main office and any branch offices; telephone and fax number for each office; name, title, telephone number, fax number, and email address of the Proposer’s contact person for this program; a statement that the Proposal is in response to this RFP; and the signature, typed name, and title of an individual who has *actual authority** to commit the Proposer to the Proposal. The transmittal letter shall also include an acknowledgement of each RFP addendum received (if applicable), and a statement that the Price Proposal is valid for at minimum ninety (90) days from the Proposal opening date.

**Proposals by individuals must be signed personally, with name typed below signature, and witnessed. A complete address and trade name must be provided. Proposals by partnerships must include the typed names and business address of all partners and the trade name of the Proposer. The Proposal must be signed by at least one general partner, whose signature must be witnessed. Proposals by corporations must include the typed name of the corporation, the State of incorporation, and the principal officer of the corporation. The Proposal must be signed by the President or Vice-President (or by an officer or agent duly authorized to bind the corporation to a contract, proof of whose corporate authority shall be attached), and attested by the Secretary, Assistant Secretary, or Treasurer of the corporation.*

5.4. Understanding of the Services

Proposers must provide a comprehensive narrative statement that illustrates their understanding of the requirements of the Services, and illustrates how their methodology will serve to accomplish the work and meet the County’s schedule. Proposers must describe how they will approach the Services; describe the methods and frequency of interface between your program team members and the County’s program team members in performing the Services; and indicate how often the program manager and the program team members will be on site in the performance of Services.

5.5. Qualification Statement

- 5.5.1. Each Proposal shall include, at minimum, the following information about the Proposer:

- 5.5.1.1. The number of years the Proposer has been in business.

- 5.5.1.2. The number of years the Proposer has provided Older Adult Daily Living Center services.

- 5.5.1.3. The type of organization of the Proposer. (i.e. Corporation, Partnership, Sole Proprietorship).
 - 5.5.1.4. The names and titles of the Proposer's principals.
 - 5.5.1.5. The Proposer's most recent annual report or the Proposer's most recent income statement, balance sheet, and statement of cash flow accompanied by an auditor's report attesting to the accuracy of these financial statements.
- 5.5.2. The following questions should be answered thoroughly as part of the Proposal:
- 5.5.2.1. What is the Proposer's main business focus?
 - 5.5.2.2. What are the strengths of the Proposer and how will the County benefit from those strengths?
- 5.5.3. Each Proposal shall address the Proposer's qualifications for the development and completion of the Services based on the following:
- 5.5.3.1. List and describe the company's experience relating to federal, state or local government Older Adult Daily Living Center Service programs. For each listed program include name and location of program; reference contact name; and telephone number; email address; actual total program cost and number of consumers served; program start date and end date; and summary description of the program. Additionally, include one monitoring report that was supplied to each agency/government.
 - 5.5.3.2. Identify the program manager and submit this individual's credentials (work/program experience and education), evidencing the experience required in Section 4, Clause 4.6.2 herein. List the names and titles of your planned program team members and describe their individual levels of experience and expertise with this type of program, evidencing the experience required in Section 4, Clause 4.6.2 herein. Include an organizational chart showing the reporting structure of the team members.
 - 5.5.3.3. Describe the company's capacity to execute the Services within the proposed term. Describe the company's willingness and ability to commit personnel to meet the scope and schedule of the Services. (Include a list of current programs and the anticipated end dates of these programs).
 - 5.5.3.4. Complete the Worker Protection and Investment Certification Form BOP-2201, Attachment D.

5.6. Conflict of Interest

- 5.6.1. Each Proposal shall include a conflict of interest statement indicating whether or not any principals in the Proposer, their spouse, or their child is employed by the County of Berks, and whether or not the Proposer or any individuals providing Services has a possible conflict of interest, and, if so, the nature of that conflict. Furthermore, Proposers shall complete the Non-Collusion Affidavit Form attached to this RFP as Attachment C and submit an executed copy with its Technical Proposal.

- 5.6.2. To preserve the integrity of County employees and elected officials and to maintain public confidence in the RFP process, the County prohibits the solicitation or acceptance of anything of value by a County employee or elected official from any person seeking to initiate or maintain a business relationship with County departments, boards, commissions, and agencies.
- 5.6.3. Proposers shall not pay any salaries, commissions, fees, or make any payments or rebates to any employee, elected official of the County or their designees. Nor shall any Proposer favor any employee, elected official of the County or their designees with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value.
- 5.6.4. The County reserves the right to disqualify a Proposer or cancel an award of the Agreement if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be performed by the Proposer. The County's determination regarding any question of conflict of interest shall be final.

5.7. Subcontractors

- 5.7.1. Subcontractors may be used to perform portions of Services. If a Proposer intends to use subcontractors, the Proposer must identify in its Proposal the names of the subcontractors and the portions of Services the subcontractors will perform in its Proposal. Proposals must contain the following information concerning each prospective subcontractor:
 - 5.7.1.1. Complete name of the subcontractor.
 - 5.7.1.2. Complete address of the subcontractor.
 - 5.7.1.3. Type of Services the subcontractor will be performing.
 - 5.7.1.4. Percentage of Services the subcontractor will be performing.
 - 5.7.1.5. Evidence that the subcontractor holds a valid Pennsylvania business license.
 - 5.7.1.6. A written statement, signed by each proposed subcontractor, that clearly verifies that the subcontractor is committed to render the Services required.
- 5.7.2. A Proposer's failure to provide this information in its Proposal may cause the County to consider the Proposal non-responsive and reject the Proposal.

5.8. Insurance

Each Proposer must provide with its Proposal a sample certificate of insurance evidencing, at minimum, the insurance coverage types and levels set forth in the Proposed Form of Agreement and General Conditions.

5.9. Counter Terms

The Proposer shall specify any exceptions or objections taken to this RFP or the Proposed Form of Agreement and General Conditions, attached hereto as Attachment A, for the County

to consider when evaluating the Proposal. Each provision the Proposer takes exception to shall be specifically identified (including a citation to the paragraph such provision is found) with the Proposer's suggested modification. It is understood that the Proposer takes no exception to the provisions of the RFP and form of Agreement not specifically identified as an exception or objection in this section of its Proposal.

5.10. Program Schedule

If a current Vendor is now awarded a contract, consumers under the OPTIONS program will be transitioned to a Vendor that is contracted to perform the OPTIONS service.

5.11. Alternative Proposals

Proposers are encouraged to review the scope of Services created by the County and the various task requirements called for within the scope of the Specification. If the Proposer believes that there are alternate methods for meeting any of the RFP requirements different than those envisioned by the County, the Proposer should detail these and submit them as a separate section within the Proposal.

5.12. Price Proposal (the paper and electronic Price Proposal shall be submitted in a separate sealed envelope)

5.12.1. Price Proposals must include:

5.12.1.1. the per diem rate for Older Adult Daily Living Center Services from July 1, 2025 to June 30, 2028.

5.12.1.2. the per meal rate for a full day from July 1, 2025 to June 30, 2028.

5.12.2. Proposers are to take into account the project funding available from the services outlined herein as identified in Section 4, Scope of Work. Refer to Attachment A, Proposed Form of Agreement and General Conditions, Clause 11, 40, and 41 for further details pertaining to funding and allocation.

5.12.3. Proposers shall separate out the per meal cost from the overall cost of their proposal for Older Adult Daily Living Center Services. The per meal cost shall be the same for the entire three (3) year term.

SECTION 6 - Evaluation Criteria and Process

6.1. A committee of County personnel representing the functions of the Berks County Area Agency on Aging will review and evaluate Proposals submitted in response to this RFP ("Evaluation Committee"). The proceedings of the Evaluation Committee are confidential. Members of the Evaluation Committee are not to be contacted by the Proposers. All communication between a Proposer and the County shall be through George Rodrigues, Deputy Director of Contracts and Procurement.

6.2. Proposals will be evaluated against the following criteria using a pass/fail determination.

6.2.1. Financial stability of the Proposer (based on our examination of the required financial statements).

6.2.2. Compliance with the essential minimum experience and qualifications of the Proposer.

- 6.2.3.** Compliance with the essential minimum experience and qualifications of the program team members.
- 6.2.4.** Evidence of sufficient levels of insurance coverage.
- 6.3.** Proposals must pass this first-tier evaluation to move on to the second-tier evaluation described below.
 - 6.3.1.** Proposals will be evaluated against the following criteria using point-rated scoring:
 - 6.3.1.1.** Ability (Resource Commitment) – The Proposer’s ability to perform the required service expeditiously. The Proposer must have the resources to be capable of meeting the required program completion schedule.
 - 6.3.1.2.** Competence (Qualifications of Personnel) – The Proposer’s competence in performing the required Services as indicated by the training, education and experience of the personnel assigned to the program team. The Proposer must have in its possession all appropriate and required certifications, permits, and licenses.
 - 6.3.1.3.** Past Performance – The Proposer’s past performance on similar programs. If the County cannot verify references based on the information provided in the Proposal, the scoring for this criteria factor may be affected.
 - 6.3.1.4.** Quality and Feasibility (Technical & Organizational Approach) – The quality and feasibility of the Technical Proposal and the Proposer’s understanding of the program’s requirements and the overall goals and objectives of the program.
 - 6.3.1.5.** Proposal Content/Format – The Proposal’s compliance with the content and format requirements of the RFP.
 - 6.3.1.6.** Price.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT
AND GENERAL CONDITIONS

AGREEMENT #

THIS AGREEMENT (“Agreement”) is entered into by and between the **County of Berks** with offices at Berks County Services Center, 633 Court Street, Reading, Pennsylvania, 19601 (hereinafter “County”) and **Vendor** with offices at [] (hereinafter “Vendor”).

Background

The County desires to engage the Vendor for the delivery of older adult daily living center services to County consumers with functional impairments as requested by the Berks County Area Agency on Aging (hereinafter “BCAAA”) in accordance with the requirements set forth in the County’s Request for Proposal #24-35-GR inclusive of all addendums (“RFP”), and Vendor’s Proposal thereto dated **Month Day, Year**, both of which are incorporated in this Agreement by reference.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Definitions

Capitalized terms not defined herein shall have the meaning set forth in the RFP.

2. Engagement

Subject to the terms and conditions set forth in this Agreement, the County hereby engages the Vendor to perform the Services set forth in the RFP on behalf of the County consistent with the terms of this Agreement.

3. Term of Agreement

This Agreement shall be effective July 1, 2025 through June 30, 2028 unless terminated in accordance with the terms and conditions of this Agreement.

4. Scope of Work

4.1. The Services shall include, without limitation, the provision of older adult daily living center services to County consumers with functional impairments as requested by the Berks County Area Agency on Aging as per RFP #24-35-GR.

4.2. The following County employee(s) are hereby authorized to place orders under this Agreement:

4.2.1. Jessica Jones

4.2.2. Todd Reinert

5. Time is of the Essence

Time is of the essence in the performance of this Agreement. The schedule for the performance of Services is identified in RFP #24-35-GR. If the completion of Services is delayed, the County reserves the right, without liability, and in addition to its other rights and remedies, to terminate this Agreement by notice, and to procure substitute Services from another vendor. The Vendor shall reimburse the County for the costs to procure substitute Services.

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6. Fees

As set forth in Vendor’s Price Proposal dated _____, including the Best & Final Offer dated _____.

6.1. Per Diem rate of _____ for Older Adult Daily Living Center Services.

6.2. Rate of _____ per meal for a full day.

7. Notices and Program Manager

All necessary coordination and communication required to carry out this Agreement, including meetings between the parties, as well as all written notices, shall be done through the individuals indicated below. Written notices shall be effective when delivered by hand, or if sent by registered or certified mail, or verified facsimile, or by confirmed courier to the address of each party indicated below.

	<i>County:</i>	<i>Vendor:</i>
Attention	Director, Berks County Area Agency on Aging	
Address	Berks County Services Center 633 Court Street, 8 th Floor Reading, PA 19601	
Telephone	610-478-6500	
Fax	610-478-6886	
Email	jjones@berkspa.gov	

Written notices shall be copied to: County of Berks, Attn: Kelly A. Laubach, Berks County Services Center, 633 Court Street, 13th Floor, Reading, PA, 19601. Fax: 610-898-7404.

8. Invoicing / Payment

8.1. Invoices must reference the above noted Agreement number. Original invoices shall be submitted to: County of Berks, Attn: Fiscal Manager, Berks County Area Agency on Aging, Berks County Services Center, 633 Court Street, 8th Floor, Reading, PA 19601.

8.2. Vendor may submit invoices no more than once per month for Services properly performed under this Agreement. No advance payments or billings are allowed. The monthly invoice shall be sent by the Vendor to AAA within ten (10) business days of the month following the month being invoiced. The County shall render payment within thirty (30) days of the County’s receipt of a properly prepared invoice. Payment shall be considered made when the County mails the check. Undisputed amounts unpaid after thirty (30) days of the County’s receipt of a properly prepared invoice shall bear interest at a rate of three percent (3%) per annum.

8.3. All invoices shall contain the following information at a minimum:

8.3.1. Legal Name of Entity.

8.3.2. Date of Invoice.

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- 8.3.3.** Month and year of service being invoiced.
- 8.3.4.** SAMS ID for consumer as provided on the Service Order from BCAA.
- 8.3.5.** Consumer’s Last Name.
- 8.3.6.** Consumer’s First Name.
- 8.3.7.** Number of days of service provided this month for each consumer.
- 8.3.8.** Contracted Rate.
- 8.3.9.** Total cost for each consumer for the current month.
- 8.3.10.** Grand total cost for all consumers for the current month.

9. Insurance

- 9.1.** The Vendor, at its sole expense, shall carry and maintain, in full force at all times during the term of this Agreement, the following insurance coverages:
 - 9.1.1.** Comprehensive General Liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
 - 9.1.2.** Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000;
 - 9.1.3.** Professional Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
 - 9.1.4.** Umbrella/Excess Liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate; and
 - 9.1.5.** Worker’s Compensation insurance in statutory limits; and Employer’s Liability insurance with limits of not less than \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee.
 - 9.1.6.** Abuse and Molestation Liability insurance with a limit of not less than \$100,000.
- 9.2.** Prior to the commencement of the performance of Services, Vendor shall furnish to the County a certificate of insurance evidencing all required coverage with at least the limits required herein, naming the County of Berks, its elected officials, agents, and employees as Additional Insured for “ongoing operations” and “products and completed operations” for a period of three (3) years after final payment under the Commercial General Liability Coverage. Coverage should be provided by ISO Endorsements CG20 10 04 13 and CG 20 37 04 13 or their equivalent. Vendor’s Commercial General Liability and Umbrella/Excess

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Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause. The County of Berks reserves the right to waive the waiver of subrogation for any and all worker's compensation policies that are provided under the State Worker's Insurance Fund (SWIF). The Certificate shall note the program and provide that no policies may be cancelled without thirty (30) days advance notice to the County. Such certificate shall be issued to: County of Berks, Attn: Contract Coordinator, 633 Court Street, 13th Floor Services Center, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of "A-" or better or financial rating of IX or better with the A.M. Best's Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the County. Said policies shall remain in full force and effect until the expiration of the terms of the Agreement or until completion of all duties to be performed hereunder by the Vendor, whichever shall occur later.

10. Precedence

Where a conflict exists between the RFP and the Vendor's Proposal, the Vendor shall provide the higher quality or quantity of Services except as specifically addressed in this Agreement. Where a conflict exists between these General Conditions and RFP or the Vendor's Proposal, the terms of these General Conditions shall prevail.

11. Availability of Appropriated Funds

The parties agree that any and all payments due from the County, as required under the terms of the Agreement, are contingent upon the availability of appropriated funds.

12. Taxes

The County is exempt from all Federal excise and transportation taxes, and Pennsylvania sales and use tax. The County's registration number with the Internal Revenue Service is 23-6003049. No exemption certificates are required, and none will be issued. Nothing in this paragraph is meant to exempt the Vendor from the payment of any applicable sales tax or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with its performance of Service. Only the County is required by law to pay any excise tax and then seek a refund or credit, the Vendor may separately charge the County the amount of the tax as a reimbursable expense.

13. Ownership of Work Product

The County, its departments, employees, agents, or assigns shall have the unrestricted right and authority to reproduce, distribute and use in whole or in part any submitted report or written materials generated by the Vendor in the performance of this Agreement. The ownership and right of control of all reports, records, and supporting documents prepared in connection with the services contemplated herein shall vest exclusively with the BCAA and shall remain, at all times, at the Vendor's Office, with a copy sent to the BCAA, however, that Vendor shall have such right of access to such reports, records, and supporting documentation as necessary for the provision of professional services hereunder. The Vendor shall notify the Executive Director and Deputy Director of the BCAA, who then shall notify other affected County Officials, anytime the Vendor receives a request for Aging Records. In addition, for Protective Services cases, an in-camera review shall be completed before a record is disclosed. Vendor shall notify the County if a motion is filed, so that the County can respond to said motion.

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14. Patents, Copyrights, Trademarks

Vendor warrants, represents and covenants that the Goods and the sale and use thereof do not infringe directly or indirectly any valid patent, copyright, property right or trademark and Vendor agrees, at its cost and expense, to indemnify and hold the County free and harmless from and against any and all costs, expense, liabilities or damages, including attorneys' fees, arising out of alleged or actual patent, copyright, property right, trademark or trade secret infringement resulting from the sale or use of deliverables provided in the performance of Services.

15. Records, Audit, and Inspection

15.1. Vendor shall maintain such records as may be necessary to adequately reflect the accuracy of Vendor's charges and invoices for reimbursement under this Agreement and such other additional records as the County may reasonably require in connection with this Agreement. Vendor shall preserve such records in accordance with statutory requirements, but in no case for less than three (3) years after the date of final payment, without additional reimbursement or compensation therefor. The County and its duly authorized representatives shall have the right, from time to time, and upon reasonable notice, to audit, inspect and verify the records kept by Vendor in connection with this Agreement. The County and its duly authorized representatives shall have the right to visit, observe, audit, and inspect, during the Vendor's normal business hours, Vendor's production and related facilities utilized to perform its obligations under this Agreement.

15.2. Monitoring

Vendor shall make available to BCAAA during the term of this Agreement all pertinent financial, program, administrative and personnel records, reports, documents, and files related directly or indirectly to Vendor's activities under and compliance with this Agreement.

15.2.1. BCAAA programmatic monitoring shall occur on a day-to-day basis as well as through site visits to be scheduled throughout the contract term. Site monitoring visits shall be conducted at a minimum of once per year.

15.2.2. Areas to be monitored may include but are not limited to: invoice submission/accuracy, incident reports, time sheets, staffing, staff retention, training, supervision, employee records, and consumer satisfaction. Unsatisfactory performance shall jeopardize contract continuation or renewal.

15.2.3. Monitoring tools outlining acceptable evidence are used in evaluating compliance with regulatory requirements, service standards, documentation, and reporting requirements.

15.2.4. Discrepancies during the monitoring visit will be documented by the County and forwarded to the Vendor's Director for review and correction. A follow-up visit may occur to determine the disposition of outstanding improvement recommendations.

16. Warranty

Vendor warrants to the County that all Services shall be done in a skilled manner and shall comply with industry standards. Vendor shall promptly re-perform Services, after receiving notification from the County of defects or nonconformance.

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17. Indemnity

Vendor agrees to indemnify and hold harmless the County, its elected officials, employees and agents from and against any and all liability, damages, claims, suits, liens, and judgments (including reasonable attorney's fees), of whatever nature, for injuries to or death of any person or persons, or loss of or damage to property, to the extent attributable to the negligent acts or omissions or willful misconduct of Vendor or its subcontractors or any of their respective agents, servants, or employees or Vendor's failure to perform in accordance with the provisions of this Agreement.

18. Force Majeure

Neither party shall be liable for any failure or delay in its performance resulting from any reasonably foreseeable cause beyond its reasonable control including, but not limited to, acts of God; acts or omissions of civil or military authority; fires, floods; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; delays in transportation; sabotage; or fuel, power, material or labor shortages, provided that the affected party notifies the other party, in writing, within forty-eight (48) hours subsequent to the commencement of an occurrence of force majeure.

19. Additional Services

In the event the Vendor determines that any alteration, modification or addition to the Services is necessary ("Additional Services"), the Vendor shall submit a proposal to the County setting forth in reasonable detail the scope of such Additional Services, the estimated time and price of performing the Additional Services and any potential impact on the then-existing Services and any fees related thereto. The Vendor shall obtain the prior written approval from the County before performing any Additional Services. The Vendor shall not be entitled to additional compensation for any work or materials associated with Additional Services unless it received such approval. If approved by the County, the Vendor shall perform or cause to be performed such Additional Services in accordance with the terms of this Agreement.

20. Termination for Convenience

The County reserves the right, at any time and for its convenience, to terminate this Agreement in whole or in any separable part by written notice to Vendor. Such notice shall be provided at least thirty (30) days prior to the intended termination date. Vendor shall be compensated for Services performed in accordance with the provisions of this Agreement up to the effective date of termination, less any payments previously made by the County for such Services, but in no event shall Vendor be entitled to recover lost or expected profit or termination expenses.

21. Termination for Cause

- 21.1.** In the event that either the Vendor or the County defaults in the performance of any obligation specified herein, the non-defaulting party shall notify the other party in writing and may suspend the Agreement, in whole or in part, pending remedy of the default. If such default is not remedied within fifteen (15) days from the date of receipt of such notice, or if the other party is diligently attempting to cure such default but is unable to cure such default within thirty (30) days from the date of receipt of such notice, then the non-defaulting party shall have the right to terminate the Agreement immediately by providing written notice of termination to the other party.
- 21.2.** In the event of such notice of breach, and a failure to cure same, all finished or unfinished documents, dates of studies and reports prepared by Vendor shall at the option of the County

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- become its property and Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents through the date of termination.
- 21.3.** Notwithstanding the above, Vendor shall not be relieved of any liability to the County for damages sustained by the County by virtue of any breach of the Agreement by Vendor. The County may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damage due the County from Vendor is determined.
- 21.4.** In the event that a Vendor's agreement is terminated, whether for cause or through nonrenewal, and a new vendor is awarded the agreement, the existing Vendor must participate in a plan of transition as developed by County. This plan may include a gradual transfer of consumers to the new agency prior to the end of the existing Vendor's agreement period.
- 21.5.** Existing Vendors are prohibited from communicating with consumers regarding changes in Vendor agencies. County will notify all consumers in writing regarding the change in service Vendor.
- 21.6.** If this Agreement is only terminated by County in part, Vendor shall continue performance of this Agreement to the extent not terminated, provided, however, that said continuation by Vendor shall take place only after County's evaluation of any and all surrounding circumstances.
- 21.7.** After the effective date of any termination by County and except as otherwise stated by County, Vendor shall:
- 21.7.1.** Stop work under this Agreement to the extent specified in such termination notice.
 - 21.7.2.** Place no further orders and/or agreements for materials, services and/or facilities except as may be necessary for completion of any such portion of work under this Agreement that is not subject to termination.
 - 21.7.3.** Terminate any and all orders and/or contracted work to the extent that relates to the performance of any work terminated.
 - 21.7.4.** Settle any and all outstanding liabilities and any and all claims arising out of any such termination of orders and/or agreements, to the extent County may require, and/or upon County's written approval of any such settlement.
 - 21.7.5.** Return to County any and all funds received not expended for any services and/or materials pursuant to this Agreement.
- 21.8.** The remedies set forth above shall be cumulative and shall be in addition to any and all other rights and remedies otherwise available to the County at law or in equity.
- 21.9.** If, during the term of this Agreement, Vendor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or become insolvent, Vendor shall give the County written notice of such occurrence as soon as is legally permissible. If such occurrence or

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proposed occurrence is unacceptable to the County, the County may terminate this Agreement immediately upon written notice thereof to Vendor.

- 21.10.** If the County terminates this Agreement for cause, in whole or in part, the County may acquire, correct, or replace Services similar to those terminated, by contract or otherwise, and the Vendor shall reimburse the County for any costs incurred by the County thereby, or an equitable reduction to the Vendor's compensation shall be made.

22. Claims for Consequential and/or Incidental Damages

The Vendor waives claims against the County for lost or expected profits, consequential damages and/or incidental damages arising out of or relating to this Agreement.

23. Release of Liens

Before any payment hereunder shall become due, the County, at its option, may require Vendor to furnish reasonable evidence of the payment of all subcontractor accounts for labor and materials pertaining to Vendor's performance hereunder. Prior to payment, the County reserves the right to require Vendor to furnish the County with a full and complete release of liens from all persons furnishing labor and materials toward the performance hereof, and in any event, Vendor agrees to indemnify and hold harmless the County, its officials, employees and agents from and against any and all liens and encumbrances arising out of Vendor's performance of this Agreement.

24. Assignment

- 24.1.** Vendor shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the County. Such consent shall not be unreasonably withheld. Any assignment consented to by the County shall be evidenced by a written assignment agreement executed by the Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.
- 24.2.** The Vendor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written approval of the Pennsylvania Department of Aging ("Department") thereto, which shall be attached to the original Agreement, and subject to such conditions and provisions as the Department may be deem necessary. No such approval by the Department of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Department in addition to the total agreed-upon price: PROVIDED, however, that claims for compensation due or to become due the Vendor from the Commonwealth under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly in writing to the Department.

25. Publicity

Neither Vendor nor any tier subcontractor shall use the name of the County or quote the opinion of any County employee in any advertising, publicity, endorsement or testimonial, without the prior written approval of the County.

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26. Compliance with Laws

In the performance of this Agreement, Vendor shall comply with all applicable laws, ordinances, rules, and regulations of governmental authorities. Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. Vendor shall give required notices, and secure and pay for any permits, licenses, and easements required for performance of services. The Vendor shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the Services.

27. Health and Safety

The Vendor shall, at all times, control the health, safety and welfare of its employees and subcontractors. Vendor shall:

- 27.1. comply with all federal, state, and local regulations, as well as all safety information and instructions as may be set forth in writing or otherwise provided by the County;
- 27.2. promptly report to the County all incidents with potentially adverse safety, health, or environmental implications, including slips, falls, equipment malfunctions, fume releases and any situation requiring first-aid or medical observations or treatment;
- 27.3. promptly report to the County all cases Vendor determines to be recordable on the OSHA 300 log or its equivalent and upon request, provide the County with a copy of the OSHA 300 log and all supporting forms;
- 27.4. properly maintain, inspect, and supervise its designated work area and roadways to keep them in reasonably safe condition;
- 27.5. supply the applicable Material Safety Data Sheet (MSDS) on all products supplied to the County or used on County property;
- 27.6. use, handle, store and dispose of any hazardous materials or waste while on the County's property in strict compliance with applicable laws and as instructed in the Material Safety Data Sheet(s); and
- 27.7. keep the County's property free of waste as the work progresses and, on completion of such activities, leave the site "broom clean" and tools, equipment and materials furnished shall be so placed and maintained as to permit unobstructed access to the work and to minimize exposure to personal injury or fire loss in a location approved by the County. The County may remove waste or store Vendor's tools, equipment, and materials if Vendor fails to properly do so and the Vendor shall reimburse the County for any costs incurred, including charges for employee time, within seven (7) days of demand.

28. Equal Employment Opportunity

- 28.1. In accordance with (2 CFR § 200.326), Appendix II, the Vendor shall comply to the applicable provision in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment

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- Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- 28.2.** During the performance of the Agreement, the Vendor shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this paragraph.
- 28.3.** Vendor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.
- 28.4.** Vendor shall send each labor union or workers’ representative with which it has a collective bargaining agreement or other Contracts or understanding, a notice advising said labor union or workers’ representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Vendor.
- 28.5.** It shall be no defense to a finding of noncompliance with this non-discrimination clause that Vendor had delegated some to its employment practices to any union, training program, or other source of recruitment that prevents it from meeting its obligations. However, if the evidence indicates that the Vendor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
- 28.6.** Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Vendor will be unable to meet its obligations under this non-discrimination clause, Vendor shall then employ and fill vacancies through other non-discriminatory employment procedures.
- 28.7.** Vendor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Vendor’s noncompliance with the non-discrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Vendor may be declared temporarily ineligible for further Agreements, and other sanctions may be imposed and remedies invoked.
- 28.8.** Vendor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Vendor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.
- 28.9.** Vendor shall include the provisions of this non-discrimination clause in every Agreement, so that such provisions will be binding upon each subcontractor.

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- 28.10.** Vendor obligations under this clause are limited to the Vendor’s facilities within Pennsylvania or, where the Agreement is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

29. Independent Contractor

The employees, subcontractors, methods, facilities, and equipment used by Vendor shall be at all times under Vendor’s direction and control. Vendor’s relationship to the County under this Agreement shall be that of an independent contractor, and nothing in this Agreement shall be construed to constitute Vendor, its subcontractors or any of their employees as an employee, agent, associate, joint venturer, or partner of the County.

30. Employees of Vendor

- 30.1.** Vendor agrees that each of its employees will be properly qualified and will use reasonable care in the performance of services while on County property. If the County, in the County’s sole opinion, determines, for any reason, that the qualifications, actions or conduct of any particular Vendor employee is inconsistent with Vendor’s obligations under this Agreement by performing unsatisfactory services, interfering with the operation of the County’s facilities, bothering or annoying any occupants, visitors, or other vendors then at facility, or that such actions or conduct is otherwise detrimental to the County, then upon the County’s written notice, Vendor shall immediately provide a qualified replacement.

- 30.2.** Vendor shall advise its employees and the employees of its subcontractors and agents that:

- 30.2.1.** It is the policy of the County of Berks to provide a drug-free work environment. To that end the County prohibits the consumption of alcohol or illegal use, possession, sale, manufacture, dispensing, and distribution of drugs or other controlled substances while performing Services or on County property on the work site, and prohibits in the workplace the presence of an individual with such substances in the body for non-medical reasons.

Any employee of Vendor who is found in violation of the policy may be removed or barred from the work site at the discretion of the County.

31. Governing Law and Jurisdiction

This Agreement shall be interpreted under the substantive law of the Commonwealth of Pennsylvania, without giving effect to its principles of conflicts of law. EACH PARTY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE COURT OF COMMON PLEAS OF BERKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, THOSE ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT, SHALL BE LITIGATED IN SUCH COURT.

32. Subcontractors

- 32.1.** If subcontractors are permitted by the RFP, the Vendor shall only use such subcontractors identified in its Proposal. The substitution of one subcontractor for another may be made

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only with the prior written approval of the County. Such approval shall not be unreasonably withheld.

- 32.2.** Notwithstanding the foregoing, the Vendor shall not subcontract with or employ any entity or individual who is currently suspended or debarred by the Commonwealth of Pennsylvania or federal government during the term of this Agreement or any extensions or renewals thereof. The County shall have the right to require the Vendor to terminate such subcontracts or employment at no cost to the County. The Vendor agrees to reimburse the County for costs and expenses incurred due to the Vendor's noncompliance with the terms of this certification requirement. For further details regarding debarment refer to Clause 47.

33. Severability

The provisions of this Agreement shall be deemed to be severable. Consequently, in the event that any provision of this Agreement is found to be void or unenforceable, such findings shall not be construed to render any other provision of this Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.

34. Reservation of Rights

Either party's waiver of any of its remedies afforded hereunder or by law is without prejudice and shall not operate to waive any other remedies which such party shall have available to it, nor shall such waiver operate to waive such party's rights to any remedies for future breach, whether of a like or different character. Furthermore, any termination or assignment of this Agreement shall not relieve or release either party hereto from any rights, liabilities, or obligations which it has accrued under law or under the terms of this Agreement prior to the date of such termination or assignment.

35. Covenant Against Contingent Fees

The 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, percentage, brokerage, or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of security business). For breach or violation of this warranty, the Commonwealth shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the consideration otherwise due under the Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

36. Funds from Private Sources

Vendor agrees that funds under this Agreement shall not be used to replace funds from non-Federal and non-State sources. Vendor further agrees to continue or initiate efforts to obtain support from private sources or other public organizations for services funded under this Agreement.

37. Special Efforts in Employment

Subject to the requirements of merit employment systems, and in accordance with state and federal laws and regulations, the Vendor shall make every possible effort to recruit and hire persons aged 60 and over for staff positions (full-time and part-time) paid under this contract. For positions paid under this contract the Vendor shall not have a policy of mandatory retirement or deny employment to any person on account of age or have a policy of mandatory retirement applicable to positions paid under subcontract with the Vendor.

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38. Regulations

This Agreement is subject to the provisions set forth in the following regulations: 28 Code of Federal Regulations Part 38, 45 Code of Federal Regulations Part 75 and 2 CFR 200 “Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards”; 45 Code of Federal Regulations Part 81 – Practice and Procedure for Hearings under Part 80 of this Title; and 45 Code of Federal Regulations Part 90 – Nondiscrimination of the Basis of Age.

- 38.1.** In carrying out this Agreement, the Vendor and any subcontractors shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. (Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, the Pennsylvania Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended and the Water Obstructions Act, Act of June 25, 1913, P.L. 555, as amended.)
- 38.2.** Services shall be provided in compliance with 25 Pa. Code_151 et seq., relating to Environmental Health and Safety regulations for food protection, and 34 Pa. Code_50.1 et seq., relating to Fire and Panic regulations.
- 38.3.** The Vendor agrees to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act, the Flood Disaster Protection Act, and the Commonwealth Motor Vehicle Procurement Act. When applicable, the Vendor agrees to comply with the provisions of the National Historic Preservation Act, Executive Order 11593 and the Archaeological and Historic Preservation Act.
- 38.4.** The Vendor agrees to fully comply with the Integrity Provisions set forth below and any changes or modification made thereto.
- 38.5.** The Vendor agrees to comply with the provisions of the Older Americans Act, as amended Section 312 and 321(b), Protecting Federal Reversionary Interest in Multipurpose Senior Centers.
- 38.6.** The Vendor agrees to comply with the provisions of the Drug-Free Workplace Act of 1998 in 41 U.S.C. Chapter 10, s. 701, et seq.
- 38.7.** The Vendor agrees to comply with and is subject to all applicable provisions of 41 U.S.C. 4172, including prohibitions on reprisal and notice to employees.
- 38.8.** All claims against the County respecting any matter pertaining to this Agreement or any part thereof shall be referred to the Board of Claims (under the Act of May 20, 1937, P.L. 728, as amended).
- 38.9.** The Vendor agrees to comply with 28 CFR Part 38, “Partnerships with Faith Based and Other Neighborhood Organizations.”
- 38.10.** Pursuant to Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving,” 74 Fed. Reg 51225. The County encourages Vendor to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this contract and to establish workplace safety policies and

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conduct education, awareness and other outreach to decrease crashes cause by distracted drivers.

38.11. In the performance of this Agreement, Vendor shall comply with all applicable laws, ordinances, rules, and regulations of governmental authorities. Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. Vendor shall give required notices, and secure and pay for any permits, licenses, and easements required for performance of services. The Vendor shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the Services.

38.12. In accordance with 2 CRF Part 200, Section 200.318, Vendor attests to the following:

38.12.1. That no employee, officer, or agent of the Vendor that participates in the selection, award, or administration of this contract has a real or apparent conflict of interest. Such a conflict of interest would arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

38.12.2. The officers, employees, and agents of the Vendor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontractors.

38.12.3. The Vendor’s standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity/County.

38.13. In accordance with (2 CFR § 200.326), Appendix II, the Vendor shall comply to the applicable provisions as follows:

38.13.1. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)

38.13.1.1. Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Vendor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Vendor must report all suspected or reported violations to the County.

38.13.2. Copeland “Anti-Kickback” Act (40 U.S.C. 3145)

38.13.2.1. Copeland “Anti-Kickback Act (40 U.S.C. 3145, as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public

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Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Vendor must report all suspected or reported violations to the County.

38.13.3. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

38.13.3.1. 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) applicable for awarded contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

38.13.4. Rights to Inventions Made Under a Contract or Agreement which shall be applicable for federal funding streams that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

38.13.5. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

38.13.5.1. Applicable for contracts and subgrants of amounts in excess of \$150,000. Vendor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

38.13.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

38.13.6.1. Vendors with an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal

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award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

38.13.7. Procurement of Recovered Materials - §200.322

38.13.7.1. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

39. Grievance Procedure

Vendor will establish a system through which applicants for and recipients of service may present grievances about the operation of the program. Vendor will advise applicants and recipients of their rights to appeal, denial, or exclusion from the program or failure to recognize the recipient's choice of service and of their right to a fair hearing. The Berks County Area Agency on Aging appeal process must be followed by the Vendor.

40. Notice Required

All notices, informational pamphlets, press releases, research reports, and similar public notices prepared and released by the Vendor shall be pre-approved by the Area Agency and include the statement, "This program is funded, in part, under an Agreement with money allocated by the Pennsylvania Department of Aging and the Berks County Commissioners, through the Berks County Area Agency On Aging."

41. Budget Flexibility

- 41.1.** Vendor may reallocate funds within cost centers and/or major objects up to 10% of the amount budgeted for the cost center/major object to which the funds are to be transferred, after informing the Area Agency. Reallocation of funds within cost centers major objects exceeding 10% require prior written approval by the Area Agency. Vendor shall submit copies of any changes in writing to the Area Agency. No amendments or revisions may be made after the end of the third quarter of the annual Agreement period.
- 41.2.** Should the "County" or "Department" or "Agency" determine that there are accruals (under spending) in the contract, the "entity" shall have the right to reduce the contract by the accrual amount, with 30 days written notice to the Vendor. Vendor has the right to request a meeting within the 30-day period to review the accrual calculation and present information to amend the accrual amount. This right to reduce shall only be utilized by the "entity" when accruals are present and not as a means to modify the scope or term of the contract.

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42. Earnings of Funds

- 42.1. Receipt of funds from County, by advance or reimbursement, does not constitute earnings of funds; funds are earned only when an allowable cost is incurred. Any unearned funds paid to Vendor shall be repaid by check to County no later than thirty (30) days after notification by County that said funds are due and owing.
- 42.2. Should the “County” or “Department” or “Agency” determine that there are accruals (under spending) in the contract, the “entity” shall have the right to reduce the contract by the accrual amount, with 30 days written notice to the Vendor. Vendor has the right to request a meeting within the 30-day period to review the accrual calculation and present information to amend the accrual amount. This right to reduce shall only be utilized by the “entity” when accruals are present and not as a means to modify the scope or term of the contract.

43. Program-Budget Changes

Vendor shall inform the Area Agency in writing of all proposed changes in program operations, administration, or policy prior to implementation and will implement changes only after Area Agency's approval. The Area Agency reserves the right to approve contracted consumer service priorities, forms, and service delivery.

44. Eligibility Determination

- 44.1. Eligibility for service recipients will be determined by the Berks County Area Agency on Aging and approved by the Pennsylvania Department of Aging in accordance with the regulations and philosophy of the Older Americans Act and Pa. Act 70.
- 44.2. For Adult Services Block Grant service recipients only, eligibility determination for those persons eligible for Title XX of the Social Security Act will be by the Vendor through the Area Agency and the County Board of Assistance in accordance with the Department of Public Welfare's comprehensive Annual Services Program Plan and Department regulations, and any Department of Aging processes and regulations.

45. Claims Against the County

The provisions of this Agreement shall be construed in accordance with the provision of the Laws of the Commonwealth of Pennsylvania. All questions or disputes arising between the parties hereto respecting any matter pertaining to this Agreement or any part thereof or any breach of contract arising thereunder must be referred by the Vendor to the Board of Claims pursuant to 61 Pa. C.S. § 1721 et seq. This shall be the exclusive remedy for the Vendor to resolve such questions and disputes if the Vendor and the County are unable to resolve them between themselves. Settlement of disputes under this provision must be prior to the final payment to the Vendor.

46. Integrity Provisions

- 46.1. It is essential that those who seek to contract with the County observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the County procurement process.
- 46.2. In furtherance of this policy, Vendor agrees to the following:

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- 46.2.1.** Vendor shall maintain the highest standards of honesty and integrity during the performance of this Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations or other requirements applicable to Vendor or that governs contracting with the County and Commonwealth.
- 46.2.2.** Vendor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Vendor employee activity with the County and Commonwealth; County and Commonwealth employees, and which is distributed and made known to all Vendor employees.
- 46.2.3.** Vendor, its affiliates, agents and employees shall not influence, or attempt to influence any County or Commonwealth employee to breach the standards of ethical conduct for County or Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
- 46.2.4.** Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County and/or Commonwealth official or employee or to any other person at the direction or request of any County and/or Commonwealth official or employee.
- 46.2.5.** Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the County and Commonwealth.
- 46.2.6.** Vendor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any County or Commonwealth official or employee.
- 46.2.7.** Vendor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the agreement, except as provided in the Agreement.
- 46.2.8.** Vendor shall not have a financial interest in any other provider, subcontractor or supplier providing services, labor or material on this program, unless the financial interest is disclosed to the County in writing and the County consents to Vendor's financial interest prior to County execution of the agreement. Vendor shall disclose the financial interest to the County at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Vendor's submission of the agreement signed by Vendor.

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- 46.2.9.** Vendor must promptly refer to the Department of Justice Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor subcontractor or other person has, in connection with funds under this award (1) submitted a claim that violates the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct. Potential fraud, waste, abuse or misconduct involving or relating to funds under this contract should be reported to the OIG by (1) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division 950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) email to oig.hotline@usdoj.gov and/or (3) the DOJ OIG hotline: at (800) 869-4499 (phone) or (202) 616-9881. Additional information is available from the DOJ OIG website at <http://www.usdoj.gov/oig>.

Link above is provided for your reference and is subject to change. It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

- 46.2.10.** Restrictions and certifications regarding non-disclosure agreements and related matters.
- 46.2.10.1.** Vendor shall not require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts or purports to prohibit or restrict the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of federal department or agency authorized to receive such information.
- 46.2.10.2.** The foregoing is not intended, and shall not be understood by, to contravene requirements applicable to Standard Form 312 (which relates to classified information). Form 4414 (which relates to sensitive compartmental information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.
- 46.2.10.3.** In accepting this Agreement, the Vendor:
- 46.2.10.3.1.** represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
- 46.2.10.3.2.** certifies that if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency whom has awarded these grant funds and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

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- 46.2.10.4.** If the Vendor does or is authorized to make subawards (“subgrants”), or engage a procurement contractor to perform services under this Agreement:
- 46.2.10.4.1.** it represents that
 - 46.2.10.4.1.1.** it has determined that no other entity that the Vendor’s application proposes may or will receive award funds (whether through a subaward (“subgrant”), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and
 - 46.2.10.4.2.** it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
 - 46.2.10.4.3.** it certifies that if it learns or is notified that any subrecipient contractor or subcontractor entity that receives funds under this agreement is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, the County, will immediately stop any further obligations of agreement funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.
 - 46.2.11.** Vendor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data or records provided to, or prepared by, Vendor under this agreement without the prior written approval of the County, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§67.101-3104*, or other applicable law or as otherwise provided in this Agreement. Any information, documents, reports, data, or records secured by Vendor from the County or a third party in connection with the performance of this agreement shall be kept confidential unless disclosure of such information is:
 - 46.2.11.1.** Approved in writing by the County prior to its disclosure; or
 - 46.2.11.2.** Directed by a court or other tribunal of competent jurisdiction unless the agreement requires prior County approval; or
 - 46.2.11.3.** Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
 - 46.2.11.4.** Necessary for purposes of Vendor’s internal assessment and review; or

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- 46.2.11.5. Deemed necessary by Vendor in any action to enforce the provisions of this Agreement or to defend or prosecute claims by or against parties other than the County; or
 - 46.2.11.6. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
 - 46.2.11.7. Otherwise required by law.
- 46.2.12. Vendor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the County agency granting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- 46.2.12.1. Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property.
 - 46.2.12.2. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Vendor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual of entity associated with:
 - 46.2.12.2.1. Obtaining;
 - 46.2.12.2.2. Attempting to obtain; or
 - 46.2.12.2.3. Performing a public grant or subgrantVendor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval, or acquiescence.
 - 46.2.12.3. Violation of federal or state antitrust statutes.
 - 46.2.12.4. Violation of any federal or state law regulating campaign contributions.
 - 46.2.12.5. Violation of any federal or state environmental law.
 - 46.2.12.6. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
 - 46.2.12.7. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 et seq.

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- 46.2.12.8.** Violation of any federal and state law prohibiting discrimination in employment, including but not limited to 28 FR Part 42.
- 46.2.12.9.** Debarment by any agency or department of the federal government or by any other state.
- 46.2.12.10.** Any other crime involving moral turpitude or business honesty or integrity.
- Vendor acknowledges that the County may, in its sole discretion, terminate the agreement for cause upon such notification or when the County otherwise learns that Vendor has been officially notified, charged, or convicted.
- 46.2.13.** If this Agreement was awarded to Vendor on a non-bid basis, Vendor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Vendor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
- 46.2.13.1.** Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed as aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.
- 46.2.13.2.** To obtain a copy of the report form, Vendor shall contact the Bureau of Commissioners, Elections and Legislation, Division of Campaign Finance and Lobby Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.
- 46.2.14.** Vendor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Vendor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Vendor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Vendor's behalf, no matter the procurement stage, are not exempt and must be reported.
- 46.2.15.** When Vendor has reason to believe that any breach of ethical standards as set forth in law, the Governor's code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Vendor shall immediately notify the Commonwealth granting officer or Commonwealth Inspector General in writing.
- 46.2.16.** Vendor, by submission of its bid or proposal and/or execution of this agreement by the submission of any bills, invoices or requests for payment pursuant to the grant, certifies and represents that it has not violated any of these integrity provisions in connection with the submission of the bid or proposal, during any agreement negotiations or during the term of the Agreement.

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- 46.2.17.** Vendor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Vendor non-compliance with these provisions. Vendor agrees to make identified Vendor employees available for interviews at reasonable times and places. Vendor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Vendor’s integrity and compliance with these provisions. Such information may include, but shall not be limited to, Vendor’s business or financial records, documents or files of any type or form that refers to or concern this Agreement.
- 46.2.18.** For violation of any of these Integrity Provisions, the County may terminate that and any other agreement with Vendor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another vendor to complete performance under this Agreement, and debar and suspend Vendor from doing business with the County. These rights and remedies are cumulative, and the use or non-use of anyone shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.
- 46.2.19.** For purposes of these Integrity Provisions, the following terms shall have the meanings found in this Clause 46.
- 46.2.19.1.** “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Vendor from a third-party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Vendor; or e) has not been independently developed by Vendor without the use of confidential information of the County or Commonwealth.
- 46.2.19.2.** “Consent” means written permission signed by a duly authorized officer or employee of the County or Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or grantual terms, the County or Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
- 46.2.19.3.** “Vendor” means the individual or entity that has entered into this Agreement with the County, including those directors, officers, partners, managers, and owners having more than a five percent interest in Vendor.
- 46.2.19.4.** “Financial interest” means:
- 46.2.19.4.1.** Ownership of more than a five percent interest in any business; or
- 46.2.19.4.2.** Holding a position as an officer, director, trustee, partner, employee or holding any position of management.

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- 46.2.19.5.** “Gratuity” means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or grants of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
- 46.2.19.6.** “Immediate family” means a spouse and any unemancipated child.
- 46.2.19.7.** “Non-bid basis” means a grant awarded or executed by the County with Vendor without seeking bids or proposals from any other potential bidder or offeror.
- 46.2.19.8.** “Political contribution” means any payment, gift, subscription, assessment, grant, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

47. Debarment/Tax Liabilities

- 47.1.** For the purpose of these provisions, the term vendor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, provider, or subcontractor, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant or subgrant with the County, or with a person under contract, subcontract, grant, or subgrant with the County or its state-affiliated entities, and state-related institutions. The term vendor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the County.
- 47.1.1.** The Vendor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any County contract, that neither the Vendor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Vendor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
- 47.1.1.1.** The Vendor must also certify, in writing, that as of the date of its execution, of any County contract it has no tax liabilities or other County or Commonwealth obligations.
- 47.1.1.2.** The Vendor’s obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Vendor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other County or Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the

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federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

- 47.1.2. The failure of the Vendor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the County.
- 47.1.3. The Vendor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Vendor's compliance with the terms of this or any other agreement between the Vendor and the County, which results in the suspension or debarment of the Vendor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Vendor shall not be responsible for investigative costs for investigations that do not result in the Vendor's suspension or debarment.
- 47.1.4. Vendor is required to screen their employees and contractors, both individuals and entities, to determine if they have been excluded from participation in Medicare, Medicaid, or any other federal health care program. Vendor will immediately notify County of any discovered exclusion of an employee or contractor, either an individual or entity.
- 47.1.5. All employees, vendors, contractors, service providers, and referral sources should be screened for exclusion before employing and/or contracting with them and, if hired, should be rescreened on an ongoing monthly basis to capture exclusions and reinstatements that have occurred since the last search.
- 47.1.6. Vendor will develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of more recent update; and periodically conduct self-audits to determine compliance with this requirement.
- 47.1.7. Any Vendor being paid with Medical Assistance or State Children's Health Insurance Program (SCHIP) dollars shall adhere to the following:
- 47.1.8. Develop policies and procedures for screening of all employees and contractors (both individuals and entities), at time of hire or contracting; and, thereafter, on an ongoing monthly basis to determine if they have been excluded from participation in federal health care programs;
- 47.1.9. Vendor will use the following databases to determine exclusion status:
 - 47.1.9.1. *Pennsylvania Medichcek List*: a data base maintained by the Pennsylvania Department of Human Services ("DHS") that identifies providers, individuals, and other entities that are precluded from participation in Pennsylvania's MA Program:

<https://www.humanservices.state.pa.us/Medchk/MedchkSearch/Index>

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Link above is provided for your reference and is subject to change. It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

If an individual's resume indicates that he/she has worked in another state, providers should also check that state's individual list.

- 47.1.9.2.** *List of Excluded Individuals/Entities (LEIE):* data base maintained by HHS-OIG that identifies individuals or entities that have been excluded nationwide from participation in any federal health care program. An individual or entity included on the LEIE is ineligible to participate, either directly or indirectly, in the MA Program. Although the DHS makes best efforts to include on the Medicare List all federally excluded individuals/entities that practice in Pennsylvania, providers must also use the LEIE to ensure that the individual/entity is eligible to participate in the MA Program:

https://oig.hhs.gov/exclusions/exclusions_list.asp

Link above is provided for your reference and is subject to change. It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

- 47.1.9.3.** Excluded Parties List System (EPLS): worldwide database maintained by the General Services Administration (GSA) that provides information about parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits:

<https://www.sam.gov/>.

Link above is provided for your reference and is subject to change. It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

- 47.1.9.4.** Vendor shall immediately self-report any discovered exclusion of an employee or contractor, either an individual or an entity, to the Bureau of Program Integrity either:

- 47.1.9.4.1.** Via e-mail through the MA Provider Compliance form at the following link:

<https://expressforms.pa.gov/apps/pa/DHS/MA-Provider-Compliance-Hotline>

- 47.1.9.4.2.** By U.S. mail at the following address:

Department of Human Services
Office of Administration
Bureau of Program Integrity
Commonwealth of Pennsylvania

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P.O. Box 2675
Harrisburg, PA 17105-2675

- 47.1.9.4.3.** By fax at: 1-717-772-4655 or 1-717-772-4638.
- 47.1.9.4.4.** Vendor shall copy the County on any notice given to the Bureau of Program Integrity in the manner and at the address provided for giving notices to the County in this Agreement.
- 47.1.9.5.** Vendor shall develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of most recent update.
- 47.1.9.6.** Vendor shall periodically conduct self-audits to determine compliance with this requirement.
- 47.1.9.7.** Vendor shall provide evidence of compliance with these requirements to the County within ten (10) days following a request by the County.
- 47.1.10.** The Vendor may obtain a current list of suspended and debarred Commonwealth providers by accessing:
- 47.1.10.1.1.** The Commonwealth of Pennsylvania - Debarment and Suspension List online at the website below:
- <https://www.dgs.internet.state.pa.us/debarmentsearch/debarment/index>
- Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: 717-783-6472
Fax No: 717-787-9138
- 47.1.10.1.2.** The Worker Protection and Labor Law Non-Compliance List online at the website below:
- <https://www.dli.pa.gov/Pages/Non-Compliance-List.aspx>
- 47.1.11.** It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

48. Examination of Records

- 48.1.** Vendor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Agreement. The foregoing constitutes "records" for the purpose of this section. Vendor agrees that a program

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and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing rations and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by State and Federal personnel and other persons duly authorized by the Area Agency. If Vendor is not a public body, Vendor agrees to maintain books, records, documents, and other evidence and accounting procedures and practices which comply with the nationally accepted Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations, as published by the National Health Council and the National Social Welfare Assembly, 1964.

- 48.2. Vendor facilities or such part thereof as may be utilized in the performance of this Agreement and Vendor's records shall be subject at all reasonable times to inspection and audit by the Commonwealth and Federal auditors and other persons duly authorized by the Area Agency.
- 48.3. Vendor agrees that until the expiration of five years after final payment under this Agreement, Federal and Commonwealth auditors and other persons duly authorized by the Area Agency shall have access to and the right to examine any records of the Vendor involving transactions related to this Agreement. Vendor may, in fulfillment of Vendor's obligation to retain Vendor's records, substitute photographs, microphotographs, or other authentic reproductions of such records after the expiration of two years following the last date of reimbursement to the Vendor.
- 48.4. Vendor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at time prescribed by, and on forms furnished by the Area Agency.
- 48.5. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of four years from the date of any resulting final settlement. In addition, records which relate to litigations or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the Auditors, shall be retained by the Vendor until such litigations, claims, or exceptions have been disposed of.
- 48.6. During the period of this Agreement, all information obtained by the Vendor shall be made available to the Area Agency immediately upon demand.

49. Progress Reports

- 49.1. The Vendor and its subcontractors shall furnish to the County such progress and periodic reports in such form and quantity as the County may from time to time require, including but not limited to, status reports of the program, proposed budgets, invoices, copies of all contracts executed and proposed and any and all other information relative to the program as may be requested.
- 49.2. In the event that the County determines that the Vendor or its subcontractors have not furnished such reports as required by the County, the County, by giving written notice to the Vendor, may suspend payments under this Agreement, until such time as the required reports are submitted.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

50. Rights In Data: Copyrights and Disclosure

- 50.1. Definition:** The term "data" as used herein, includes written reports, drawings, studies, computer programs, and work of any similar nature that is required to be delivered under this Agreement. It does not include Vendor's financial reports or other information incidental to Agreement's administration.
- 50.2. Rights in Data:** Data submitted to and accepted by the Department of Aging under this Agreement shall be the property of the Department of Aging and it shall have full right to use such data for any official purpose in whatever manner deemed desirable and appropriate. Such use shall be without any additional payment to or approval by the Vendor.
- 50.3. Copyrights:** Vendor relinquishes any and all copyrights and/or privileges to data developed under this Agreement. Vendor shall not include in the data any copyrighted matter without the written approval of the Department of Aging unless Vendor provides the Department of Aging with written permission of the copyright owner for the Department of Aging to use such copyrighted matter in a manner provided herein. Vendor shall exert all reasonable effort to advise the Department of Aging, at the time of delivery of data furnished under this Agreement, of all invasions of the right to privacy contained therein. The Vendor shall defend any suit or proceeding brought against the Commonwealth and/or County on account of any alleged infringement of any copyright arising out of the performance of this Agreement, including all work, services, materials, reports, studies, and computer programs provided by the Vendor. This is upon the condition that the Commonwealth and/or County shall provide prompt notification in writing of such suit or proceedings, full right, authorization and opportunity to conduct the defense thereof, and full information and all reasonable cooperation for the defense of the same. As principles of governmental or public law are involved, the Commonwealth and/or County may participate in the defense of any such action. The Vendor shall pay all damages and costs awarded therein against the Commonwealth and/or County. If information and assistance are furnished by the Commonwealth and/or County at Vendor's written request, it shall be at the Vendor's expense, but the responsibility for such expense shall be only that within the Vendor's written authorization. If any of the materials, reports, studies, or computer programs provided by the Vendor are in such suit or proceeding held to constitute infringement and the use of publication thereof is enjoined, the Vendor shall, at his/her own expense and at his/her option, either procure the right to publish or continue use of such infringing materials, reports, studies, or computer programs, replace them with non-infringing items, or so modify them so that they are no longer infringing. The obligations of the Vendor under this paragraph continue without time limit.

51. Americans with Disabilities Act

Pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C.F.R. §35.101 *et seq.*, the Vendor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from the activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Vendor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs and activities provided by the Commonwealth of Pennsylvania through contracts with outside providers.

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

52. Nondiscrimination/Sexual Harassment Clause

52.1. During the term of the Agreement, Vendor agrees as follows:

- 52.1.1.** In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any contract or subcontract, the Vendor, a contractor, each subcontractor, or any person acting on behalf of the Vendor, contractor or subcontractor shall not discriminate by reason of race, gender, creed or color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 52.1.2.** Neither the Vendor, contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity under this Agreement.
- 52.1.3.** Neither the Vendor, contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this Agreement.
- 52.1.4.** Neither the Vendor, contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
- 52.1.5.** The Vendor, contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
- 52.1.6.** The Vendor, contractor or each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any contractor, subcontractor or supplier who is qualified to perform the work to which the Agreement relates.

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- 52.1.7.** The Vendor, contractor and each subcontractor represent that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Vendor, contractor and each subcontractor further represents that it has filed a Standard Form 00 Employer Information Report (EEO-1) with the U.S. Equal Employment Opportunity Commission (EEOC) and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Vendor, contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the County and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 52.1.8.** The Vendor, any contractor or any subcontractor shall, within the time periods requested by the County, furnish all necessary employment documents and records and permit access to their books, records and accounts by the County and the Bureau of Minority and Women Business Opportunities (BMWBO), for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 52.1.9.** The Vendor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every contract or subcontract so that those provisions applicable to contractors or subcontractors will be binding upon each contractor or subcontractor.
- 52.1.10.** The Vendor's, contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of this Agreement through the termination date thereof. Accordingly, the Vendor, contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of this Agreement, it becomes aware of any actions or occurrences that would result in violation of these provisions.
- 52.1.11.** The County/Commonwealth may cancel or terminate the Agreement and all money due or to become due under this Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, County may proceed with debarment or suspension and may place the Vendor, contractor, or subcontractor in the Contractor Responsibility File.

53. Set Off Clause

The Vendor agrees that the County may set off the amount of any county or state tax liability or other obligation of the Vendor or its subsidiaries to the County against any payments due the Vendor under any contract with the County.

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AND GENERAL CONDITIONS

54. Property and Supplies

- 54.1.** Vendor agrees to use its best efforts to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase all supplies and equipment over \$3,000.00 by means of a system of competitive quoting and/or bidding as required under the provisions of the Pennsylvania 3rd Class County Code, Article XVIII and/or Federal Acquisitions Regulations, as applicable.
- 54.1.1.** Proper bidding procedures shall adhere to Federal Regulations governing procurement outlined in 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards”, as amended. When obtaining written quotations procedures must be in place to ensure that a linkage is maintained with the Small Business Administration and other agencies which are able to assist in identifying small and minority-owned businesses.
- 54.2.** In addition, the Vendor shall maintain and administer with sound business practice a program for maintenance, repair, preservation, and insurance of property.
- 54.3.** Any vehicle purchased by the Vendor with Aging funds shall be adequately insured to cover occasional operation by Berks County Area Agency on Aging staff; said insurance to be in an amount approved by Berks County Area Agency on Aging and proof of said insurance shall be provided to Berks County Area Agency On Aging yearly.
- 54.4.** Title to all property furnished by the Department of Aging through the Area Agency Agreements shall remain with the said Department. Title to all property acquired by the Vendor, including purchase by lease-purchase agreement, for the cost of which the Vendor is to be reimbursed under this Agreement, shall vest in the Vendor during the term of this Agreement unless otherwise noted in the Agreement. Upon cancellation or termination of this Agreement, disposition of such purchased property that has remaining useful life shall be made in accordance with the following provisions:
- 54.4.1.** If the Vendor wishes to retain any items of such purchased property, both parties will arrange for an independent third party appraisal (agreed upon by the Area Agency) of these property items and will reimburse said Department for the value of the remaining life of the property on the basis of such appraisals;
- 54.4.2.** The Vendor may sell the property and reimburse said Department for its appropriate share providing said Department is notified ten days in advance of the date of sale, and prior written approval is received from the Secretary of Aging, the Governor's Office of Administration and the Area Agency.
- 54.5.** The Commonwealth property and any property purchased under this Agreement shall, unless otherwise provided herein or approved in writing by said Department, be used only for the performance of this Agreement. In the event the Vendor is compensated for any loss, destruction or damage to the property, the Vendor shall renovate, repair, or replace the property. Any proceeds shall be credited to the Agreement.

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55. Right to Know Law

- 55.1.** The Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101-3104, applies to this Agreement.
- 55.2.** Unless the Vendor provides the County, in writing, with the name and contact information of another person, the County shall notify the provider using the Vendor information provided by the Vendor in this Agreement if the County needs the Vendor’s assistance in any matter arising out of the RTKL. The Vendor shall notify the County in writing of any change in the name or the contact information within a reasonable time prior to the change.
- 55.3.** Upon notification to the Vendor that the County has received a request for records under the RTKL related to this Agreement that may be in the Vendor’s possession, constituting or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Vendor shall:
- 55.3.1.** Provide the County, within five (5) business days after receipt of the County’s written notification, access to, and copies of, any document or information in the Vendor’s possession arising out of this Agreement that the County reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 55.3.2.** Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- 55.4.** If the Vendor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or information that the Vendor considers exempt from production under the RTKL, the Vendor must notify the County and provide within five (5) business days of receiving the County’s written notification, a written statement signed by a representative of the Vendor explaining why the requested material is exempt from public disclosure under the RTKL.
- 55.5.** The County will rely upon the written statement from the Vendor in denying a RTKL request for the Requested Information unless the County determines that the Requested Information is clearly not protected from disclosure under the RTKL. If the County denies a RTKL request in reliance upon Vendors written statement and the denial is appealed, Vendor agrees to fully participate in any RTKL appellate proceedings.
- 55.6.** If the Vendor fails to provide the Requested Information within the time period required by these provisions, the Vendor shall indemnify and hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor’s failure, including any statutory damages assessed against the County.
- 55.7.** The County will reimburse the Vendor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- 55.8.** The Vendor may file a legal challenge to a decision by the County’s decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts,

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however, the Vendor shall indemnify the County for any legal expenses incurred by the County as a result of such a challenge and shall hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County, regardless of the outcome of such legal challenge. As between the parties, the Vendor agrees to waive all rights or remedies that may be available to it as a result of the County's disclosure of Requested Information pursuant to the RTKL.

- 55.9.** The Vendor's duties relating to the RTKL are continuing duties that survive the expiration of the Agreement and shall continue as long as the Vendor has Requested Information in its possession.

56. Federal and State Audit Requirements

- 56.1.** Vendor must comply with all federal and state audit requirements including: the Single Audit Act, as amended, 31 U.S.C. 7501 *et seq*; 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards", as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the state or federal government.
- 56.2.** If the Vendor is a local government or non-profit organization and expends total federal awards during its fiscal year in an amount at or exceeding the threshold listed in 2 CFR Part 200, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have an audit made in accordance with the provisions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards".
- 56.3.** If the Vendor is a for-profit organization and expends total federal awards during its fiscal year in an amount at or exceeding the threshold listed in 2 CFR Part 200, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have a program-specific audit made in accordance with the provisions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" and in accordance with the laws and regulations governing the programs in which it participates.
- 56.4.** If the Vendor expends total federal awards the threshold amount listed in 2 CFR Part 200 during its fiscal year, it is exempt from these audit requirements but is required to maintain auditable records of federal and any state funds which supplement such awards and to provide access to such records by federal and state agencies or their designees.
- 56.5.** In the event an audit is required, the Vendor is responsible for obtaining the required audit and securing the services of a certified public accountant or other independent governmental auditor. The audit shall be completed, and the report submitted to the County no later than 90 days after the close of the agreement period.
- 56.6.** In the event that an audit is performed that is not mandated by applicable federal laws or regulations, Vendor shall not charge its costs of the audit to federal funding streams.

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- 56.7.** Vendor shall maintain adequate and sufficiently detailed records of all the services provided pursuant to this Agreement to permit an evaluation of finances and performance, which records shall be open at all reasonable times for inspection by the County, federal, state and county agencies or their authorized representatives. The County and any competent federal, state or county agency or their authorized representatives shall have the right to inspect, audit and copy Vendor's records during normal business hours. The County shall provide fourteen (14) days' notice to Vendor in the event of such an audit.
- 56.8.** The County shall advise Vendor of any discrepancies in adherence to this Agreement. Vendor upon receipt of such notification hereby agrees to promptly correct any discrepancies to the satisfaction of the County.
- 56.9.** Vendor shall maintain and make available such books, records and documents related to this Agreement for five (5) years from the termination of this Agreement, or until all disputes have been resolved to the satisfaction of the County or by final decision or judgment, or as otherwise required by applicable federal or state laws and regulations, whichever is greater.

57. Assurance of Compliance

- 57.1.** The Vendor provides this assurance in consideration of and for the purpose of obtaining Federal Grants, loans, contracts, property, discounts or other Federal financial assistance from the Department of Health and Human Services.
- 57.2.** The Vendor hereby agrees that it will comply with:
- 57.2.1.** Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.
- 57.2.2.** Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulations, no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.
- 57.2.3.** Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that in accordance with IX and the Regulations, no person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

under any educational program or activity for which the Vendor received Federal financial assistance from the County.

57.2.4. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulations, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in or be subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.

57.3. The Vendor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal financial assistance, and that is binding upon the Vendor, its successors, transferees, and assignees for the period during which such assistance is provided. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Vendor by the County, this assurance shall obligate the Vendor, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Vendor for the period during which it retains ownership or possession of the property. The Vendor further recognizes and agrees that the United States shall have the right to seek judicial enforcement of this assurance.

58. Worker Protection and Investment

58.1. To the extent applicable, Vendor shall comply with Commonwealth of Pennsylvania Executive Order 2021-06, Worker Protection and Investment, and certify Vendor is in compliance with all applicable Pennsylvania state labor and workforce safety laws including:

58.1.1. Construction Workplace Misclassification Act;

58.1.2. Employment of Minors Child Labor Act;

58.1.3. Minimum Wage Act;

58.1.4. Prevailing Wage Act;

58.1.5. Equal Pay Law;

58.1.6. Employer to Pay Employment Medical Examination Fee Act;

58.1.7. Seasonal Farm Labor Act;

58.1.8. Wage Payment and Collection Law;

58.1.9. Industrial Homework Law;

ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

58.1.10.Construction Industry Employee Verification Act;

58.1.11.Act 102: Prohibition on Excessive Overtime in Healthcare;

58.1.12.Apprenticeship and Training Act; and,

58.1.13.Inspection of Employment Records Law.

58.2. Vendor shall also certify compliance with Unemployment Compensation tax requirements and Workers' Compensation insurance requirements.

58.3. Vendor shall certify compliance with the aforementioned statutes by completing the "Worker Protection and Investment Certification Form BOP-2201, Attachment D", attached hereto and made a part of this Agreement.

59. Vendor's Commitments

Any written commitment or representation of Vendor made within the scope of this Agreement shall be binding upon Vendor and is hereby incorporated into this Agreement.

60. Cooperation in Litigation

The Vendor shall cooperate fully with the County in any prosecution or defense of any litigations, claims, and threatened litigations. If County becomes involved in any matters involving litigation or threatened litigation against others not including Vendor, Vendor shall cooperate fully with County's efforts to dispose of such matters. Such cooperation shall include, but not be limited to, submission of information, attendance at meetings and appearance in court or before other judicial or quasijudicial bodies.

61. Membership Restrictions of Facilities

Funds awarded by this Agreement shall not be used to hold meetings, conferences, training sessions or other gatherings at any facility which excludes or restricts membership of individuals on account of race, color, religion, national origin, ancestry, or gender.

62. Reporting of Allegations/Suspicious

62.1. Vendor shall be responsible for resolution of consumer/family allegations against Vendor employees regarding theft and misappropriation, including instituting disciplinary/legal action against the employee if warranted. Vendor shall immediately notify County of all allegations made by or on behalf of a consumer funded under this Agreement.

62.2. All allegations made against any Vendor employee involving consumer abuse, neglect or exploitation shall be immediately reported to County and County's Older Adult Protective Services Unit. Failure to report such allegations shall jeopardize continuation of the agreement.

62.3. If any Vendor employee suspects consumer abuse, neglect, exploitation, or abandonment by individuals other than Vendor employees, it shall be immediately reported to County's Older Adult Protective Services Unit.

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AND GENERAL CONDITIONS**

63. Headings

All headings included for convenience only and shall not affect any construction or interpretation of this Agreement.

64. Entire Agreement

The governing terms and conditions of this Agreement are expressly limited to the terms and conditions contained in this Agreement and documents incorporated herein. This Agreement constitutes the complete integration of all oral and written documents, is the entire and final Agreement between the parties and may be amended only by a written instrument signed by authorized officials of both parties.

With the intent to be legally bound, authorized officials of each party have signed this Agreement on the dates written below. Each person signing this Agreement represents and warrants that such person is fully authorized to sign and enter into this Agreement on behalf of the Vendor named above his or her signature.

Both parties agree and acknowledge that electronic/facsimile signatures are binding to this Agreement.

County of Berks

Vendor

By: _____

By: _____

Name (printed): Kelly A. Laubach, CPPB

Name (printed): _____

Title: Director of Contracts and Procurement

Title: _____

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name (printed): George M. Rodrigues

Name (printed): _____

Title: Deputy Director, Contracts & Procurement

Title: _____

ATTACHMENT B – HIPPA AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

AND NOW, effective this ____ day of _____, 2025 (the “**Effective Date**”), this Business Associate Agreement (“**Agreement**”) is entered into by and between _____ (the “**Business Associate**”) and the **County of Berks** (the “**Covered Entity**”), located at 633 Court Street, 13th Floor, Services Center, Reading, PA 19601.¹

WHEREAS, Business Associate will or may have access to, or may create on behalf of the Covered Entity, certain Protected Health Information (“**PHI**”) in carrying out its obligations, as more fully described below, and therefore is obligated to protect such PHI as a Business Associate, in accordance with the regulations issued by the U.S. Department of Health and Human Services (“**DHHS**”) pursuant to the Health Insurance Portability and Accountability Act (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) (the regulations being promulgated thereunder being hereinafter referred to as the “**HIPAA/HITECH Regulations**”).

WHEREAS, the parties desire to delineate their obligations pursuant to the HIPAA/HITECH Regulations, all as more fully described herein.

NOW THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Definitions.

(a) “**Breach**” shall have the same meaning as in 45 C.F.R. § 164.402, and shall include the acquisition, access, use or disclosure of “Protected Health Information” (as defined below) in a manner not permitted under the Privacy Rule, as defined below, and which compromises the privacy or security of the information, unless there is a low probability that the protected health information has been compromised based on Covered Entity’s risk assessment of the following factors:

(i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;

(ii) the unauthorized person who used the protected health information or to whom the disclosure was made;

(iii) whether the protected health information was actually acquired or viewed, and

(iv) the extent to which the risk to the protected health information has been mitigated.

A Breach excludes: (1) Any unintentional acquisition, access, or use of protected health information by a workforce member or person acting under the authority of a Covered Entity or a Business Associate, if made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under HITECH; (2) Any inadvertent disclosure by a person authorized to access protected health information at a Covered Entity or Business Associate to another

¹ To the extent that the County is deemed to be a “Hybrid Entity” (as defined herein), all terms and conditions of this Agreement that apply with respect to the “Covered Entity” above shall apply equally to the County as a “Hybrid Entity” and/or to the covered components or functions of such entity.

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person authorized to access protected health information at such entities, or organized health care arrangement in which the Covered Entity participates, and the information received is not further used or disclosed in a manner not permitted under HIPAA/HITECH Regulations; or (3) Any disclosure of protected health information where the Covered Entity determines in good faith that the person to whom the disclosure was made would not reasonably have been able to retain the information.

(b) “**Business Associate**” shall have the same meaning as in 45 C.F.R. § 160.103, and shall include with respect to a covered entity, a person or entity who, in performing its functions or activities on behalf of such covered entity creates, receives, maintains, or transmits Protected Health Information (as defined below), and includes a person or entity who:

(i) provides legal, actuarial, accounting, consulting, data aggregation (as defined in 45 C.F.R. § 164.501), management, administrative, accreditation, or financial services to or for such covered entity;

(ii) provides data transmission services with respect to protected health information to Covered Entity and that requires access on a routine basis to such protected health information;

(iii) a person that offers a personal health record to one or more individuals on behalf of a covered entity; or,

(iv) a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the business associate.

(c) “**Designated Record Set**” shall mean a group of records maintained by or for Covered Entity that includes the medical records and billing records about an “individual” maintained by or for the Covered Entity, and shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

(d) “**Electronic PHI**” shall mean electronic protected health information or “PHI”, as further defined below, and shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.

(e) “**HIPAA Rules**” shall mean the privacy, transaction and security regulations/standards further defined below, as promulgated pursuant to **HIPAA**, as codified at 45 C.F.R. Parts 160, 162 and 164.

(f) “**HITECH Standards**” shall mean the breach notification provisions/standards applicable to a business associate under **HITECH**, pursuant to the DHHS regulations promulgated thereunder, as codified at 45 C.F.R. § 164, Subpart D.

(g) “**Hybrid Entity**” shall have the same meaning as defined in 45 C.F.R. 164.103 and refers to a single legal entity whose business activities include both covered and non-covered HIPAA/HITECH functions.

(h) “**Individual**” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(i) “**Individually Identifiable Health Information**” shall have the same meaning as defined in 45 C.F.R. § 160.103, and shall include health information, including demographic

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information collected from an individual that: (1) is created by or received from a health care provider, health plan, employer or health care clearinghouse, and (2) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and either (i) identifies the individual or (ii) there is a reasonable basis to believe that the information can be used to identify the individual.

(j) **“Protected Health Information”** or **“PHI”** shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, including but not limited to the “individually identifiable health information” (as defined above) created or received by a business associate from or on behalf of a covered entity.

(k) **“Privacy Rule”** shall mean the standards for privacy of individually identifiable health information set forth at 45 C.F.R. § 164, Subpart E.

(l) **“Security Incident”** shall have the same meaning as defined in 45 C.F.R. § 304 and means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

(m) **“Security Rule”** shall mean the security standards, 45 C.F.R. § 164, Subpart C, as they exist now or as they may be amended, including but not limited to § 164.308 (Administrative Safeguards); § 164.310 (Physical Safeguards), and § 164.312 (Technical Safeguards).

(n) **“Unsecured Protected Health Information”** or **“Unsecured PHI”** shall have the same meaning as defined in 45 C.F.R. § 164.402, and shall mean PHI that is not rendered unusable, unreadable or indecipherable to unauthorized persons through the use of a technology or methodology specified by DHHS in the implementing regulations of HITECH.

Terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA/HITECH Regulations.

2. General Uses and Disclosures. Business Associate acknowledges and agrees as follows:

(a) Use or Disclosure. Business Associate agrees not to use or further disclose PHI other than as expressly permitted or required by this Business Associate Agreement or as required by law.

(b) Minimum Necessary. Business Associate will take reasonable efforts to limit, use and disclosure of PHI to the minimum necessary to fulfill its obligations, or as necessary to fulfill the intended request, use or disclosure.

(c) Specific Use or Disclosure Provisions. Business Associate may use and disclose PHI to properly perform its obligations pursuant to the parties’ Services Agreement (the **“Services Agreement”**), and consistent with applicable law, as long as such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity, and/or such use or disclosure is expressly permitted in (i) through (iii) below:

(i) Business Associate may use PHI as minimally necessary to fulfill its obligations pursuant to the parties’ Services Agreement.

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(ii) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities.

(iii) Subject to Section 2(f) below, Business Associate may disclose PHI to third parties for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate provided that the disclosures are required by law, or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and (C) the third party notifies Business Associate of any instances of which it is aware that the privacy/security of the information has been breached in accordance with the HIPAA Rules and HITECH Standards.

(d) Security Safeguards. Business Associate agrees to use appropriate safeguards and comply with the security standards of Subpart C of 45 C.F.R. § 164, to prevent use or disclosure of PHI in a manner that would violate this Business Associate Agreement or applicable legal requirements. Business Associate shall provide Covered Entity with information concerning such safeguards as Covered Entity may reasonably request from time to time. To the extent that Business Associate creates, receives, maintains or transmits Electronic PHI, Business Associate agrees to use appropriate administrative, physical and technical safeguards to protect the Electronic PHI as required by the Security Rule.

(e) Mitigation/Indemnification. To the extent that Business Associate is responsible for a breach, Business Associate agrees to mitigate, to the extent commercially reasonable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Business Associate Agreement, or in violation of applicable HIPAA/ HITECH Regulations. Business Associate acknowledges and agrees that it shall be liable for, and shall indemnify and hold Covered Entity harmless against, any claims, damages or government penalties, as well as reasonable attorneys' fees, resulting from any act or omission of Business Associate or its subcontractor(s)/agent(s) in breach of this Agreement, or in violation of law, including the HIPAA/HITECH Regulations.

(f) Subcontractors and Agents. Business Associate shall ensure that if any subcontractor, to the extent authorized by Covered Entity, creates, receives, maintains or transmits PHI for the Business Associate on behalf of the Covered Entity, the subcontractor shall agree to the same restrictions, terms and conditions that apply through this Agreement to Business Associate with respect to such information, including the requirement that it implement reasonable and appropriate safeguards to protect any PHI that is disclosed to it, as well as the breach notification requirements applicable to PHI under HITECH, by executing a business associate agreement approved by Covered Entity. Business Associate shall notify Covered Entity of any subcontractor's breach of its business associate agreement, or of any privacy/security incident or violation of law applicable to the subcontractor, including Business Associate's steps to cure or mitigate subcontractor's breach, if applicable.

(g) Access. Only if applicable to the Services Agreement, and upon reasonable request by the Covered Entity, but not later than thirty (30) days following such request, Business Associate shall provide access or copies to Covered Entity of PHI, in a Designated Record Set in order to meet the requirements under 45 C.F.R. § 164.524.

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(h) Amendment. Only if applicable to the Services Agreement, and upon reasonable request by the Covered Entity, but not later than thirty (30) days following such request, Business Associate agrees to make PHI available to Covered Entity for any appropriate amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526.

(i) Accounting. Only if applicable to the Services Agreement, and upon reasonable request by the Covered Entity, but not later than sixty (60) days following such request, Business Associate agrees to document and make available to Covered Entity or subject Individual, for a reasonable cost-based fee (to the extent permitted by HIPAA Rules) such disclosures of PHI, and information related to such disclosures, necessary to respond to a request for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

(j) Audit and Inspection. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of the Covered Entity, available to DHHS or the Covered Entity, in a time and manner requested by DHHS or the Covered Entity, for purposes of determining the Business Associate's compliance with the HIPAA/HITECH Regulations.

(k) Compliance. To the extent the Business Associate is required to carry out any Covered Entity's obligations that are subject to the HIPAA/HITECH requirements, if applicable, Business Associate shall comply with all applicable HIPAA/HITECH requirements and standards the same extent as required by the Covered Entity.

3. Covered Entity Obligations.

(a) If applicable to the Services Agreement, Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity 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 in performing its functions under the Services Agreement.

(b) If applicable to the Services Agreement, Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI in performing its functions under the Services Agreement.

(c) If applicable to the Services Agreement, Covered Entity shall notify Business Associate of any restriction of 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 in performing its functions under the Services Agreement.

(d) If applicable to the Services Agreement, Covered Entity agrees that it will have entered into "Business Associate Agreements" with any third parties (e.g., trading partners) to which Covered Entity directs and authorizes Business Associate to disclose PHI.

4. Security Incident Reporting/Breach Notification. Business Associate agrees to promptly notify the Covered Entity if Business Associate has knowledge of a Security Incident related in any way to the Services Agreement, that PHI has been used or disclosed by Business Associate, its subcontractor/agent or otherwise in a manner that violates the HIPAA/HITECH Regulations or this Business Associate Agreement. Business Associate agrees to report to the Covered Entity any Security Incident or breach of Unsecured PHI (as defined in Section 1) which Business Associate discovers (as

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defined in 45 C.F.R. § 164.410), immediately and without unreasonable delay, or as promptly as reasonably warranted by the circumstances (subject to (a) below), in order for Covered Entity to properly assess the breach and to comply with all applicable legal requirements in accordance with § the HITECH Standards.

(a) Business Associate shall provide the following information to the Covered Entity immediately upon discovery of a breach/incident except when, despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time, in which case the information shall be provided as soon as reasonably possible, but in no event more than two (2) business days following the breach/incident, and in accordance with 45 C.F.R. § 164.404 of the HITECH Rule, as follows:

- (i) the date of the breach/incident;
- (ii) the date of the discovery of the breach/incident;
- (iii) a description of the Unsecured PHI that was involved;
- (iv) identification of each Individual(s) whose Unsecured PHI has been or is reasonably believed to have been, accessed, acquired or disclosed; and,
- (v) any other information reasonably necessary to complete an assessment of the breach and requirements necessary for compliance with the HITECH Standards.

(b) At the direction of the Covered Entity, Business Associate will cooperate with Covered Entity in providing notification to the Individual(s) concerning Unsecured PHI that has been disclosed, as well as to DHHS and by media or public notice, if necessary, as may be required by the HITECH Rule.

(c) Business Associate agrees to take corrective action, if applicable, to investigate the breach, mitigate losses, and protect against any future breaches, and to provide a description of this corrective action plan to Covered Entity promptly upon the reasonable request of Covered Entity.

5. Term; Termination.

(a) Except as otherwise expressly provided herein, the Term of this Business Associate Agreement shall expire automatically upon the termination or expiration of the parties' Services Agreement.

(b) Without limiting the termination rights of the parties pursuant to the Services Agreement, upon Covered Entity's knowledge of a material breach by Business Associate of this Business Associate Agreement, Covered Entity may notify Business Associate that it has thirty (30) days to cure such breach, or such shorter time as reasonably warranted by the circumstances. In the event Business Associate does not cure the breach, or if cure is infeasible as reasonably determined by Covered Entity, the Covered Entity shall have the right to terminate this Business Associate Agreement, upon written notice thereof.

(c) Upon termination of this Agreement for any reason, Business Associate shall, and/or shall cause its subcontractor/agent to, return or destroy and retain no copies of all PHI created or received by, Business Associate or its subcontractor/agent on behalf of the Covered Entity. If Business Associate determines that return or destruction of such information is not

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feasible, Business Associate shall provide Covered Entity with notification of conditions that render return or destruction infeasible. In such event, Business Associate shall continue to limit the use or disclosure of such information as set forth in this Agreement and shall not use or disclose such information except for those purposes that make return or destruction of the information infeasible, for so long as Business Associate maintains the PHI.

(d) The obligations of Business Associate under this Business Associate Agreement shall survive the termination of this Agreement.

6. Miscellaneous.

(a) Amendment. The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the HIPAA/HITECH Regulations. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with all federal, state or other legal requirements, including, but not limited to, the requirements of the HIPAA/HITECH Regulations as may be amended from time to time. The parties shall work in good faith to reach agreement on an amendment to the Business Associate Agreement that continually complies with the law and shall act at all times in accordance with the law, as fully incorporated herein, even this Agreement has not been formerly amended. Any other amendment to this Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the parties.

(b) Other Laws. In addition to the HIPAA/HITECH laws and regulations, the parties acknowledge that there may be other federal or state laws applicable to protecting the privacy and security of the medical or other personal information, including without limitation, Pennsylvania's Breach or Personal Information Notification Act (73 P.S. §§ 2301, et seq.), and the parties agree to fully comply with such laws and corresponding regulations, As fully incorporated by reference herein.

(c) Effect on the Services Agreement. Except as relates to the use, security, privacy and disclosure of PHI and electronic PHI transactions, this Business Associate Agreement is not intended to change the terms and conditions of, or the rights and obligations of the parties under, the Services Agreement. All non-conflicting terms and conditions of the Services Agreement as between Covered Entity and Business Associate shall control the interpretation and enforcement of this Agreement and remain in full force and effect.

(d) No Third-Party Beneficiaries. Except as may be required by law, nothing express or implied in the Services Agreement or in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(e) Governing Law. This Business Associate Agreement shall be governed by, and interpreted consistently with, the HIPAA/HITECH Regulations to the fullest extent applicable to this Agreement. In all other respects, the parties agree this Agreement shall be governed by, and interpreted consistently with, the parties' Services Agreement, which is fully incorporated by reference herein.

(f) Assignment. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, except that neither part may, without the specific prior written consent of the other party, assign any of its interest or rights in or to, or

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arising under, this Agreement, or delegate the performance of any of its obligations and duties hereunder except to the extent permitted by the parties’ Services Agreement.

(g) No Waiver. The failure of any party or parties to enforce at any time any right or privilege under this Agreement shall in no way constitute or be construed as a waiver of that or any other right or privilege under this Agreement, nor shall it affect in any way the validity and full enforceability of this Agreement. No waiver of any right or privilege under this Agreement shall operate as a waiver of any other breach of that or any other provision of this Agreement and no waiver of any remedy for any such breach shall operate as a waiver of any other remedy for such breach. Should any provision of this Agreement be deemed unenforceable by a court of competent jurisdiction, such finding shall not invalidate the balance of this Agreement, which shall remain in full force and effect.

(h) No Prior Business Associate Agreement. This Business Associate Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior business associate agreements between the parties hereto.

IN WITNESS WHEREOF, the parties’ authorized representatives have executed this Agreement effective as of the day and year first above written.

BUSINESS ASSOCIATE

COVERED ENTITY

COUNTY OF BERKS

By: _____

By: _____

Printed Name: _____

Printed Name: Kelly A. Laubach, CPPB

Title: _____

Title: Director of Contracts and Procurement

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____

By: _____

Name (printed): _____

Name (printed): George M. Rodrigues

Title: _____

Title: Deputy Director, Contracts & Procurement

ATTACHMENT C – NON-COLLUSION AFFIDAVIT FORM

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any Agreement pursuant to a Proposal. According to the Pennsylvania Antirigging Act, 62 Pa. C.S.A. § 4501 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with Proposals, such as the Proposal submitted by the Proposer.
2. This Non-Collusion Affidavit must be executed by the member officer, or employee of the Proposer who is authorized to legally bind the Proposer.
3. Proposal rigging and other efforts to restrain competition, and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should carefully examine it before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the Proposer with responsibilities for the preparation, approval or submission of the Proposal.
4. If the Proposal is submitted by a joint venture, each party to the venture must be identified in the Proposal documents, and a Non-Collusion Affidavit must be submitted separately on behalf of each party.
5. The term “complementary Proposal” as used in the Non-Collusion Affidavit has the meaning commonly associated with that term in the RFP process, and includes the knowing submission of a Proposal higher than the Proposal of another firm, any intentionally high or noncompetitive Proposal, and any form of Proposal submitted for the purpose of giving a false appearance of competition.
6. Failure to file a Non-Collusion Affidavit in compliance with these instructions will result in disqualification of the Proposal.

ATTACHMENT C – NON-COLLUSION AFFIDAVIT FORM

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

(1) He/She is _____
(Owner, Partner, Officer, Representative or Agent of Proposer)

of _____, the Proposer that
(Name of the Proposer)
has submitted the attached Proposal;

(2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

(3) Such Proposal is genuine and is not a collusive or sham Proposal;

(4) Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Proposer, firm or person to submit a collusive or sham Proposal or complementary Proposal in connection with the Contract for which the attached Proposal is submitted or to refrain from submitting in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication of conference with any other Proposer, firm or person to fix the price or prices in the attached Proposal or of any other Proposer, or to fix any overhead, profit or cost element of the prices in the Proposal or the price of any other Proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Berks or any person interested in the proposed Agreement;

(5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant; and,

(6) Neither the said Proposer nor any of its officers, partners, owners, agents or parties in interest, have any interest, present or prospective, that can be reasonably construed to result in a conflict of interest between them and the County of Berks, which the Proposer will be required to perform.

ATTACHMENT C – NON-COLLUSION AFFIDAVIT FORM

I state that _____ understands
(Name of Proposer)

and acknowledges that the above representations are material and important and will be relied on by the County of Berks in awarding the Agreement for which the Proposal is submitted. I understand and the Proposer understands that any misstatement in this Non-Collusion Affidavit is and shall be treated as fraudulent concealment from the County of Berks of the true facts relating to the submission of proposals for this Agreement.

Name: _____

By: _____
Authorized Signatory

Title: _____
President or Vice President

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, 2025

Notary Public

My Commission Expires: _____



WORKER PROTECTION AND INVESTMENT CERTIFICATION FORM

A. Pursuant to Executive Order 2021-06, *Worker Protection and Investment* (October 21, 2021), the Commonwealth is responsible for ensuring that every worker in Pennsylvania has a safe and healthy work environment and the protections afforded them through labor laws. To that end, contractors and grantees of the Commonwealth must certify that they are in compliance with Pennsylvania’s Unemployment Compensation Law, Workers’ Compensation Law, and all applicable Pennsylvania state labor and workforce safety laws including, but not limited to:

1. Construction Workplace Misclassification Act
2. Employment of Minors Child Labor Act
3. Minimum Wage Act
4. Prevailing Wage Act
5. Equal Pay Law
6. Employer to Pay Employment Medical Examination Fee Act
7. Seasonal Farm Labor Act
8. Wage Payment and Collection Law
9. Industrial Homework Law
10. Construction Industry Employee Verification Act
11. Act 102: Prohibition on Excessive Overtime in Healthcare
12. Apprenticeship and Training Act
13. Inspection of Employment Records Law

B. Pennsylvania law establishes penalties for providing false certifications, including contract termination; and three-year ineligibility to bid on contracts under 62 Pa. C.S. § 531 (Debarment or suspension).

CERTIFICATION

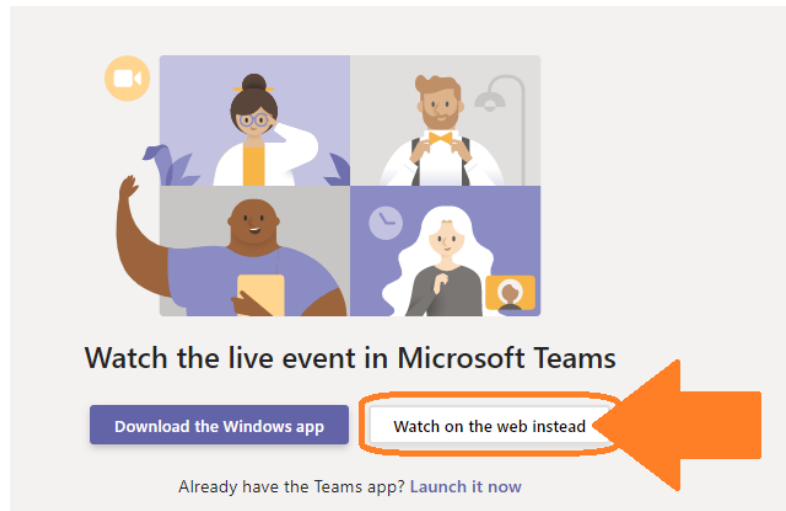
I, the official named below, certify I am duly authorized to execute this certification on behalf of the contractor/grantee identified below, and certify that the contractor/grantee identified below is compliant with applicable Pennsylvania state labor and workplace safety laws, including, but not limited to, those listed in Paragraph A, above. I understand that I must report any change in the contractor/grantee’s compliance status to the Purchasing Agency immediately. I further confirm and understand that this Certification is subject to the provisions and penalties of 18 Pa. C.S. § 4904 (Unsworn falsification to authorities).

<i>Signature</i>	<i>Date</i>
<i>Name (Printed)</i>	
<i>Title of Certifying Official (Printed)</i>	
<i>Contractor/Grantee Name (Printed)</i>	

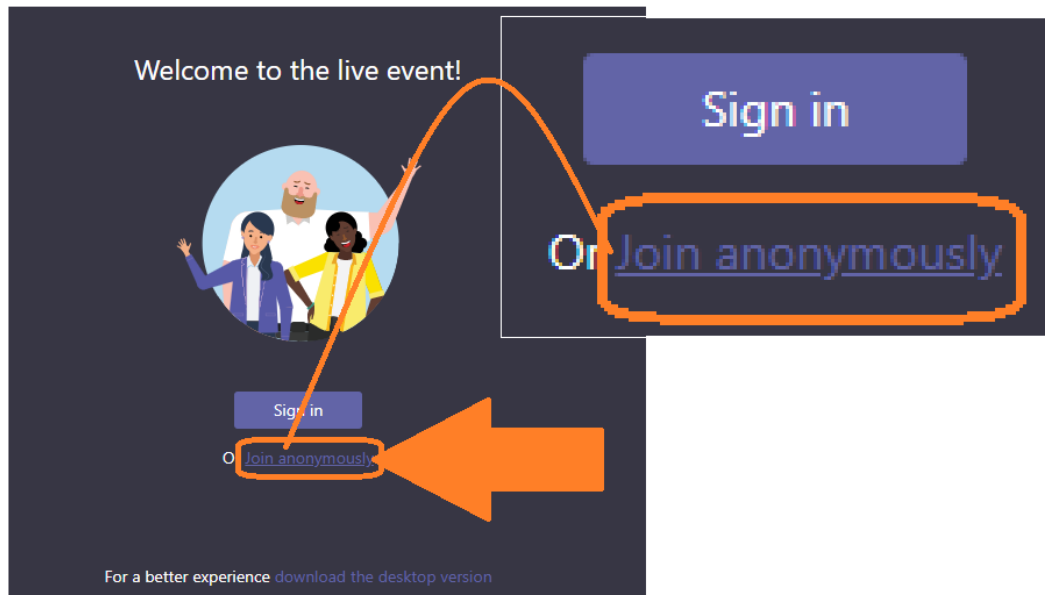
Teams works best in Edge or Chrome. It does not work in Internet Explorer.

The Meeting

- Step # 1. Go to the Purchasing ITB and RFP page on the County website at <https://www.countyofberks.com/departments/purchasing/itb-rfp>
- Step # 2. The Teams Live Event links for the Pre-Bid/Pre-Proposal, as well as the Bid/Proposal Opening will be posted with each specific Invitation to Bid (ITB) and Request for Proposal (RFP).
- Step # 3. Click on the meeting link associated with the ITB or RFP you are interested in for the appropriate event.
- Step # 4. Click Watch on the web instead.



- Step # 5. You will be prompted to download the Teams app, Open in web browser (Edge or Chrome) or Launch the Teams app if you already have it. You can select Join on the web instead and join as a guest. If you have used Teams in the past, launch the app and use a verified account.



ATTACHMENT E - INSTRUCTIONS TO JOIN AND PARTICIPATE IN A MICROSOFT TEAMS MEETING

- Step # 6. You will join the meeting in the “Lobby” until you are admitted by County staff.
- Step # 7. All Public participants join the meeting muted with cameras off. County staff will change your participation status at which point you can control your camera and microphone.
- Step # 8. Please add your name and company name to the Chat when you are admitted to the meeting. (This is only required for pre-bid/pre-proposal events.)
- Step # 9. You can use the Chat, “Raise Your Hand” feature or unmute and ask your questions real-time. Please keep your questions germane to the ITB/RFP being reviewed.
- Step # 10. Close the application or web browser window to leave the meeting.

End of process