

COUNTY OF BERKS

**Invitation to Bid # 25-07-MZ
for
Personal Emergency Response Systems**

Issued on March 24, 2025

Pre-Bid Conference:

Monday, April 7, 2025, 2:30 PM
Refer to Section One, paragraph #1.2 for details.

Submittal Deadline:

Tuesday, April 22, 2025, 1:00 P.M. Local prevailing time
Refer to Section One, paragraph 2.1 for submittal instructions.

Opening Date/Time:

Tuesday, April 22, 2025, 2:30 P.M. Local prevailing time

County's Point-of-Contact for this ITB:

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This Invitation to Bid (ITB) package consists of 83 pages including this cover page and the Table of Contents page. If the ITB package you received is missing any pages, contact the County of Berks Purchasing Department at telephone number (610) 478-6168.

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SECTION ONE

INSTRUCTIONS TO BIDDERS

PART 1 - Introduction and General Instructions

1.1 Purpose of Invitation to Bid

This Invitation to Bid (“ITB”) sets forth the terms and conditions under which a successful Bidder(s) shall be obligated to supply and deliver an indefinite quantity of Personal Emergency Response Systems (“PERS”) as further detailed in the specifications (“Goods and Services”), through sealed bids (each a “Bid”) and which are requested by the County of Berks (hereinafter “County”), a municipal corporation with its principal office in Reading, Pennsylvania. If the County elects to make an award to the lowest responsive, responsible Bidder(s) for the Goods and Services, the Form of Agreement and General Conditions included as Attachment H to this ITB as well as all documents incorporated therein shall form the entire agreement between the County and the successful Bidder(s) (“Agreement”).

1.2 Pre-Bid Meeting

1.2.1 A pre-bid meeting will be held through a live broadcast Microsoft Teams on April 7, 2025, beginning promptly at 2:30 PM. The Bidders may participate in the pre-bid meeting of this Invitation to Bid 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 ITB: <https://www.berkspa.gov/departments/purchasing/itb-rfp>

1.2.2 The purpose of this meeting is to conduct a question and answer session regarding this ITB package to maximize the Bidders’ understanding of the requirements of this ITB.

1.3 Due / Opening Dates

1.3.1 The deadline for receipt of Bids is 1:00 P.M., local prevailing time, Tuesday, April 22, 2025 (“Bid Deadline”). The County Controller’s time clock shall be considered the official time. **There will be no exceptions to Bid Deadline.** See Section One, paragraph 2.1 for detailed submittal instructions.

1.3.2 Bids will be opened publicly at 2:15 P.M., local prevailing time, the same day, Tuesday, April 22, 2025 (“Bid Opening”). Bidders may attend the bid opening through a live broadcast using Microsoft Teams. A summary of Bids received (company name and Bid price) will be posted on the Purchasing Department page of the County’s website (www.berkspa.gov). The Microsoft Teams URL for the opening can be found on the following site under the listing for this specific ITB: <https://www.berkspa.gov/departments/purchasing/itb-rfp>

1.4 Bid Modification / Withdrawal

1.4.1 Bids may not be modified after submittal. Bids may be withdrawn after submittal, provided the Bidder makes its request to withdraw in writing and the request is acknowledged by the Owner in writing prior to the time specified for Bid opening in the Invitation to Bid.

1.4.2 Negligence by Bidder in preparing its Bid confers no right of withdrawal or modification of its Bid after such Bid has been opened. No claims on account of mistakes or omissions in any Bid will be considered.

1.4.3 Notwithstanding the above, a Bidder may withdraw its Bid after such Bid has been opened if the price Bid was submitted in good faith, and the Bidder submits credible evidence that the reason for the price Bid being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services

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made directly in the compilation of the Bid; provided, (i) notice of a claim of the right to withdraw such Bid is made in writing with the County within two (2) business days after the Bid Opening; and (ii) the withdrawal of the Bid would not result in the awarding of the Agreement on another Bid of the same Bidder, its partner, or to a corporation or business venture owned by or in which such Bidder has a substantial interest. No Bidder who is permitted to withdraw a Bid shall supply any material or labor to or perform any subcontract or other work agreement for any person to whom the Agreement may be subsequently awarded without the prior written approval of the County.

- 1.4.4 Bids shall be irrevocable for sixty (60) days after the actual day of opening thereof unless delayed by the required approval of another governmental agency, the sale of bonds or the award of a grant, in which case, Bids shall be irrevocable for one hundred twenty (120) days after Bid opening. Extensions of the date for the award of contract may be made by the mutual written consent of Owner and the lowest responsible and responsive Bidder.
- 1.4.5 In the event the Prevailing Wage Rates included with the Bidding Document expire after the opening of Bids, but before the award of the Contract, the Bidder agrees that an updated determination of the Prevailing Wage Rates shall be obtained from the Secretary of Labor and Industry and that the Bidder, if awarded the Contract, will pay the Prevailing Wage Rates set forth in such updated determination in accordance with the requirements of the General Conditions. Under such circumstances, the Bidder agrees that it will not withdraw its Bid nor be entitled to increase the amount Bid or the Contract Sum, as applicable.
- 1.4.6 Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

1.5 Bidder Questions / Requested Changes to ITB

- 1.5.1 Questions requesting changes to the ITB requirements, or requests to bid a product that differs from the Technical Specifications must be submitted **in writing** to the County's point-of-contact for this ITB (see cover page) no later than 3:00PM on April 9, 2025.
- 1.5.2 Requests to bid a product that differs from the Technical Specifications must include detailed specifications on the proposed substitute product(s). If requested by the County, the Bidder shall provide samples of the proposed substitute product(s). Such samples shall be provided at the expense of the Bidder and shall become the property of the County.
- 1.5.3 Answers to questions, acceptance of requested changes to ITB requirements or Technical Specifications will be provided in an amendment to the ITB, which will be posted on the County's website (www.berkspa.gov) and notice of the issuance of the amendment will be given to all parties recorded by the County as having received the ITB documents from the County's Purchasing Department.
- 1.5.4 Questions answered, or responses not set forth in an amendment shall not be valid and binding upon the County. A Bid that contains exceptions or offers substitute products not previously approved by the County may result in the County rejecting the Bid as a non-responsive Bid.

1.6 Preparation Costs

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

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1.7 Bidders' Receipt of the ITB Package

- 1.7.1 The County's Purchasing Department is the sole authority to provide the ITB package to interested companies or individuals. Bidders who are working from an ITB package obtained from any other source may be working from an incomplete set of documents. The County assumes no responsibility for a Bid's errors, omissions or misinterpretations resulting from a Bidder's use of an incomplete ITB package.
- 1.7.2 Bidders who have received the ITB package from a source other than the County's Purchasing Department or who have downloaded the ITB package from the County's website, are advised to contact the Purchasing Department to provide their company's name, address, telephone number, fax number and contact name. This will ensure that the Bidder will receive all communication regarding the ITB such as addenda.

1.8 Public Information

- 1.8.1 Under Pennsylvania's "Right to Know" laws (65 P.S. §§ 67.101-67.3104), public records are required to be open to reasonable inspection. The County will make available for viewing the Bids and associated documents by appointment, at the County's Purchasing Department. Requests for photocopies of public records must be made to the Chief Clerk and will be provided to the requestor for a nominal per page fee.
- 1.8.2 Trade secrets and other proprietary data associated with the Goods and Services may be held confidential, if the Bidder requests, in writing, that the County does so, and if the County agrees, in writing, to do so. Material considered confidential by the Bidder must be clearly identified and the Bidder must include a brief statement that sets out the reasons for confidentiality.
- 1.8.3 All Bids received become the property of the County.

PART 2 - Bid Submission: Format and Content

2.1 Submission of Bids

- 2.1.1 Bids shall be submitted with one (1) original and one (1) copy printed on 8½" x 11" paper to the following address: **County of Berks, c/o County Controller, Berks County Services Center, 633 Court Street, 12th Floor, Reading, PA 19601**. The original Bid shall be marked "original" and each copy of the Bid must be a complete copy of the original including all attachments and appendixes.
- 2.1.2 Bids (original and copies) must be enclosed in a sealed, opaque envelope or other container with the words "Sealed Bid – "Personal Emergency Response Systems ("PERS")" and the Invitation to Bid number clearly printed on the outside.
- 2.1.3 **To be considered, the Bid must be submitted in accordance with all requirements set forth in this ITB.**

2.2 Bid Security

Not Applicable

2.3 Consent of Surety

Not Applicable

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2.4 Worker's Protection and Investment Certification

To ensure compliance with all applicable Pennsylvania state labor and workforce safety laws, the Bid shall be accompanied by a completed Worker Protection and Investment Certification Form BOP-2201 acknowledging the Bidder's responsibilities and compliance with Executive Order 2021-06, Worker Protection and Investment, October 21, 2021. Refer to Attachment "K" for the Worker Protection and Investment Certification Form BOP-2201. The Worker Protection and Investment Certification Form BOP-2201 shall be executed by a representative who has sufficient knowledge and authority to make the representations and certifications contained in the Form.

2.5 Use of Bid Forms

2.5.1 The Bid shall be made on the forms included in this ITB and all applicable blanks on such forms shall be filled in. The forms to be included in the Bid are:

Attachment A Bid Form;

Attachment B Piggyback Agreement;

Attachment C Non-Collusion Affidavit;

Attachment D Reference Form;

Attachment K Worker Protection and Investment Certification Form BOP-2201.

2.5.2 **A Bidder's failure to submit proper documentation may result in the County's rejection of the Bid.**

2.5.3 For each line item offered, Bidders shall show both the unit price and extended price. In case of a discrepancy between the unit price and extended price, the unit price will be presumed to be correct, and the extended price shall be corrected accordingly.

2.5.4 Bids for supplies or services other than those specified or approved substitutes will not be considered.

2.6 Evidence of Insurance

All Bidders must provide with their Bid a sample certificate of insurance evidencing, at minimum, the insurance coverage types and levels set forth in Attachment H Form of Agreement and General Conditions of this ITB.

2.7 Conflict of Interest

2.7.1 To preserve the integrity of County employees and elected officials and to maintain public confidence in the ITB 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.

2.7.2 Bidders 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 Bidders favor any employee or 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.

2.7.3 **It is the Bidder's responsibility to include in their Bid a notification to the County of any principals in the company, their spouse, or their child who are employed by the County, and of any other possible conflict of interest that exists and the nature of that conflict.**

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2.7.4 The County reserves the right to disqualify a Bidder or cancel the award of the Agreement if any association disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Goods and Services to be supplied by the Bidder. The County's determination regarding any question of conflict of interest shall be final.

2.8 Proof of Product Equivalency

If applicable and/or required in the Technical Specifications, Bids must include proof of product equivalency and/or manufacturer specification sheets.

2.9 Debarment

By submitting a Bid, the Bidder certifies to the County that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania or federal government and if the Bidder cannot so certify, then it shall submit with its Bid a written explanation of why such certification cannot be made.

PART 3 – Evaluation of Bids

3.1 Evaluation of Bids

The County reserves the right to award a single contract for the total requirement of the ITB or award multiple contracts on a group or line-item basis in any combination that best serves the interest of the County.

3.2 Rejection or Disqualification of Bids

3.2.1 A Bid that is incomplete, obscure, conditioned or contains additions or substitute products not called for or irregularities of any kind, including, but not limited to, alterations or erasures which are not initialed, may be rejected as non-conforming. Reasons for rejection of a Bid at the time of Bid Opening include, but are not limited to, failure to include a signed Bid Bond (if required) on the County's form; failure to include a signed consent of security (if required); failure to include a signed Non-Collusion Affidavit; and lack of an authorized signature on the Bid Form.

3.2.2 The County reserves the right to waive a Bid's minor irregularities if rectified by Bidder within three (3) business days of the County's issuance of a written notice of such irregularities.

3.2.3 Any Bidder who has demonstrated poor performance during a current or previous agreement with the County may be considered a non-responsible Bidder and its Bid may be rejected. The County reserves the right to exercise this option as is deemed proper and/or necessary.

3.2.4 The County reserves the right to disqualify a Bid before or after opening, upon evidence of collusion with intent to defraud or other illegal practices upon the part of the Bidder.

3.3 Identification of the Lowest Responsive, Responsible Bidder

3.3.1 The County intends to award the Agreement to the lowest responsive, responsible Bidders meeting all terms, conditions, and specifications of the ITB, within sixty (60) days of the opening of the Bids. Submitted Bids shall remain valid during this sixty-day period. The County reserves the right, in its sole and absolute discretion, to accept or reject any and all Bids or parts thereof.

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3.3.2 In determining the lowest responsive, responsible Bidders, the following conditions, among others, will be considered. Whether the Bidders:

3.3.2.1 maintain a permanent place of business;

3.3.2.2 have adequate equipment to supply the Goods and Services properly and expeditiously;

3.3.2.3 have suitable financial status to meet obligations to supply the Goods and Services;

3.3.2.4 have had experience on projects of similar character and magnitude; and

3.3.2.5 are licensed to do business in the Commonwealth of Pennsylvania (if applicable).

3.4 Post-Bid Qualifications

After the Bid Opening, Bidders must be prepared to present suitable evidence of their qualifications and financial standing within three (3) business days after request by the County.

3.5 Post-Bid Forms

3.5.1 After the County identifies the apparent lowest responsive, responsible Bidders, the County's Purchasing Office will notify such Bidders. Such Bidders shall, within ten (10) business days of such notice, submit all necessary post-Bid documentation meeting the requirements of this ITB, which shall include, without limitation:

3.5.1.1 an executed Form of Agreement;

3.5.1.2 performance security and

3.5.1.3 certificate of insurance.

3.6 Performance Security

Not Applicable

3.7 Confidentiality of Protected Health Information

3.7.1 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 Bidders 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 Bidders 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 the Agreement if it determines that there has been a material breach of this provision.

3.7.2 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 Bidders are determined by County to meet the definition of a "Business Associate" or "Subcontractor" (as such terms are defined under HIPAA) of County, the successful Bidders and County shall enter into a HIPAA Business Associate Agreement in a form satisfactory to County, which shall govern the treatment of any protected health information created, received, transmitted or maintained by successful Bidders on behalf of the County.

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3.8 Awarding the Agreement

Upon the County's receipt and approval of the lowest responsive, responsible Bidders' Post-Bid qualifications and forms, the County will make a recommendation to the County Commissioners with regard to awarding the Agreements. The Agreements shall only be awarded upon the passage of a resolution awarding the Agreements by the Berks County Board of Commissioners.

3.9 Protests

Any and all protests related to this Invitation to Bid 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>.

PART 4 – Operation of Resulting Agreement

4.1 Form of Agreement and General Conditions

Upon request, the apparent lowest, responsible Bidders shall fill in all necessary details and execute the Form of Agreement and General Conditions attached hereto as Attachment H and submit the same for the County's execution.

4.2 Agreement Documents

The entire integrated Agreement shall be comprised of the Agreement Documents which include, without limitation, the executed Form of Agreement, this ITB, the successful Bidder's performance security, the Bid of the successful Bidders, and all purchase orders.

4.3 Pricing

The successful Bidders are required to hold the Bid prices fixed and firm for a period of three (3) years from the commencement date of the Agreement. Bids containing references to possible escalation of prices during the term of the Agreement will be rejected as conditioned Bids.

4.4 Term of the Agreement

The contracts, which results from the award of this ITB, shall be for a period of one (1) year commencing upon the Award of the Agreements unless otherwise extended.

SECTION TWO TECHNICAL SPECIFICATIONS

1. Summary

This section of the ITB describes the County's requirements for Personal Emergency Response Systems ("PERS") for eligible consumers as requested by the Berks County Area Agency on Aging ("BCAAA"). PERS are electronic devices that enable certain high-risk consumers to receive help in the event of an emergency. PERS services are limited to those consumers who live alone or who are alone for significant parts of the day, have a significant risk for falls, an unstable medical condition, and have no regular caretaker for extended periods of time. The consumer must be cognitively and functionally capable of using these devices.

1.1. Aging Program Directive ("APD")/Federal/State - Regulatory References

1.1.1. Organizations providing services outlined in these Technical Specifications shall comply with all Federal and State directives as amended listed below:

1.1.1.1. Pennsylvania Department of Aging's Policy and Procedure Manual Chapter IV: OPTIONS.

1.1.1.2. Appendix F, Availability and Reliability for Critical Operations Power Systems; and Development and Implementation of Functional Performance Tests for Critical Operations Power System ("Appendix F") of the National Electric Code ("NEC").

1.1.2. These Specifications are subject to change based on changes to the above directive(s).

2. Functional Requirements

All PERS units shall be certified as meeting the standards for the safety and use as outlined in Appendix F of the NEC Requirements.

3. Item Specifications

3.1. All Standard In-Home PERS units may be a wristband or pendant and shall include/be:

3.1.1. Installation in the consumer's home, including any needed jack modifications and devices;

3.1.2. Two-way speaker communication;

3.1.3. Inactivity timer;

3.1.4. Emergency button pendant or bracelet;

3.1.5. Base Unit;

3.1.6. Rechargeable battery;

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- 3.1.7. Anti-failure protection features;
 - 3.1.7.1. Including power failure and low or missing battery alerts.
- 3.1.8. Six hundred plus (600+) foot range;
- 3.1.9. Waterproof;
- 3.1.10. Monitored system check and twenty-four (24) hour battery back-up;
- 3.1.11. Phone cord;
- 3.1.12. AC wall plug;
- 3.1.13. Forty-eight plus (48+) hour battery life between charges;
- 3.1.14. The ability to self-test online status of all functions; and
- 3.1.15. Fall detection.

3.2. All In-Home Cellular PERS may be a wristband or pendant and shall include/be:

- 3.2.1. Installation in the consumer's home, including any needed phone jack modifications and devices;
- 3.2.2. Two-way speaker communication;
- 3.2.3. Inactivity timer;
- 3.2.4. Emergency button pendant or bracelet;
- 3.2.5. Base Unit;
- 3.2.6. Rechargeable battery;
- 3.2.7. Anti-failure protection features;
 - 3.2.7.1. Including power failure and low or missing battery alerts.
- 3.2.8. Six hundred plus (600+) foot range;
- 3.2.9. Waterproof;

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- 3.2.10. Monitored system check and twenty-four (24) hour battery back-up;
 - 3.2.11. AC wall plug;
 - 3.2.12. Forty-eight plus (48+) hour battery life between charges;
 - 3.2.13. Minimum of 4G technology;
 - 3.2.14. The ability to self-test online status of all functions; and
 - 3.2.15. Fall detection.
- 3.3. All Mobile PERS may be a wristband or pendant and shall include/be:
- 3.3.1. Installation in the consumer's home; including any needed phone jack modification and devices;
 - 3.3.2. Two-way speaker communication;
 - 3.3.3. Inactivity timer;
 - 3.3.4. Emergency button pendant or bracelet;
 - 3.3.5. Base unit;
 - 3.3.6. Rechargeable battery;
 - 3.3.7. Anti-failure features;
 - 3.3.7.1. Including power failure and low or missing battery alert.
 - 3.3.8. Six hundred plus (600+) foot range;
 - 3.3.9. Waterproof;
 - 3.3.10. Monitored system check and twenty-four (24) hour battery back-up;
 - 3.3.11. Phone cord;
 - 3.3.12. AC wall plug;
 - 3.3.13. Forty-eight plus (48+) hour battery life between charges;

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- 3.3.14. The ability to self-test online status of all functions; and
- 3.3.15. Fall detection.
- 3.4. The PERS shall be leased from an emergency medical response system vendor. As part of the Vendor(s)'s monthly charge, the Vendor(s) shall either directly or through subcontracting with another vendor, provide for ongoing provision of online emergency response center services. This shall include:
 - 3.4.1. Response to consumer testing and daily provider testing;
 - 3.4.2. Self-auditing and quality control;
 - 3.4.3. Repair and replacement; and
 - 3.4.4. Twenty-four (24) hour staffing by trained operators of the emergency response center three hundred sixty-five (365) days a year.

4. Item Specifications

- 4.1. PERS shall be limited to those individuals that have one (1) or more of the following conditions/situations:
 - 4.1.1. Lives alone;
 - 4.1.2. Are alone for significant parts of the day;
 - 4.1.3. Have no regular caretakers for extended periods of time;
 - 4.1.4. Would otherwise require extensive routine supervision;
 - 4.1.5. Limited or absent formal or informal support systems;
 - 4.1.6. Documented history of falls within the last six (6) months that resulted in an injury that required medical or emergency care, and/or
 - 4.1.7. Care access challenges.
- 4.2. The use of PERS shall be authorized when all other methods such as informal caregivers, infant monitoring systems, and other less restrictive technology have been demonstrated to be ineffective or unavailable for individual safety.

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5. Delivery or Performance Requirements

Delivery of Goods and Services shall be initiated within five (5) business days of the date of service order request. In exceptional circumstances, service delivery may be expedited upon the verbal request of a BCAA Manager/Supervisor.

5.1. Initiating Service.

- 5.1.1. Referrals for service shall be at the discretion of the BCAA. The Vendor(s) agrees that it is not the sole provider of these services. BCAA reserves the right to order service from another Vendor if services cannot be provided.
- 5.1.2. The actual amount of service ordered is at the discretion of the BCAA and shall depend upon the demand/need for service.
- 5.1.3. The actual number of units of service and the number of consumers to be served will vary from month to month based on BCAA consumers' activity/status.
- 5.1.4. The final decision-making authority to initiate, continue, terminate, increase, or decrease service shall rest solely with the BCAA.
- 5.1.5. To ensure responsive delivery of services, the Vendor(s) and Care Manager(s) must maintain close communication.
 - 5.1.5.1. All changes to services provided shall be authorized by the Care Manager.
 - 5.1.5.2. Vendor(s) shall notify the Care Manager when there is any deviation from the service ordered.
- 5.1.6. All services provided shall be consistent with the care plan authorized by the BCAA Care Manager.

5.2. Installation

- 5.2.1. It shall be the Vendor(s)'s responsibility to deliver and install each PERS unit that is ordered. Services shall be billed in the month that the PERS units are ordered and installed.
- 5.2.2. The Care Manager shall notify the Vendor by phone or email when there is a request for installation. The Vendor shall arrange with the consumer for a mutually convenient appointment within five (5) business days of the notification by the Care Manager.
- 5.2.3. The Vendor shall immediately notify the Care Manager if it is unable to

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schedule or complete an installation within the required time frame.

- 5.2.4. The Vendor(s) shall provide all equipment necessary for installing a PERS unit.
- 5.2.5. The Vendor(s) shall instruct the consumer in the use and maintenance of the PERS unit and shall provide the consumer with simple written instructions, including how to report a malfunction.
- 5.2.6. The Vendor(s) shall, upon the request of the consumer or Care Manager, provide additional follow-up instructions to operate and maintain the PERS unit.
- 5.2.7. The Vendor(s) shall forward a form signed by a representative or employee of the Vendor and by the consumer or the consumer's representative confirming the date of the installation and the consumer's understanding of the use and maintenance of the PERS unit to the Care Manager within five (5) business days of the installation either by mail, email, or facsimile.
- 5.2.8. If any applicable regulatory, industry, or manufacturer standards are changed, resulting in improvements, or updating of equipment, Vendor(s) shall notify the Care Manager and each active consumer with leased equipment shall be provided with new equipment that meets said changed standards.

5.3. Maintenance of Equipment and Service

- 5.3.1. PERS equipment shall be maintained in proper working order and guaranteed by the Vendor(s).
- 5.3.2. The Vendor(s) shall make provisions to ensure that each installed PERS is operating properly at least once every week.
- 5.3.3. Testing shall preferably be automated and cause the least possible inconvenience for the consumer.
- 5.3.4. The Vendor(s) shall notify the consumer's Care Manager(s) within twenty-four (24) hours of any PERS that is not operating properly. Malfunctioning equipment shall be repaired or replaced within twenty-four (24) hours of notification or identification.

5.4. Suspension and Termination of Service

- 5.4.1. The decision to discontinue a PERS is at the sole discretion of the BCAAA. For

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all PERS removals, a notification shall be made to the Vendor by phone or email from the consumer's Care Manager. A written authorization to terminate services shall be sent to the Vendor on the same date as the phone or email notification.

- 5.4.1.1. If the Vendor is notified by a participant's family or other representative to remove the PERS, Vendor shall first obtain authorization from the participant's Care Manager before proceeding with the removal.
- 5.4.2. When services are suspended due to a hospital admission, the Care Manager shall notify and/or authorize the Vendor to take the unit offline. Services shall be resumed to the participant only after the Care Manager notifies the Vendor.
 - 5.4.2.1. Payment for leased equipment shall be made at the contracted unit price as long as a unit remains in the home of a participant.
- 5.4.3. The Vendor shall disconnect/remove a PERS from a participant's residence within five (5) business days of notification given by the Care Manager.

5.5. Emergencies

- 5.5.1. Vendor(s) shall have a written contingency plan outlining emergency operations.
- 5.5.2. Vendor(s) shall maintain, either directly or through a subcontract, a twenty-four (24) hour Emergency Response Center staffed with trained emergency response operators. The Emergency Response Center shall perform the following activities:
 - 5.5.2.1. Respond immediately to all signals from participant's PERS equipment and maintain appropriate contact until termination of the emergency situation.
 - 5.5.2.2. Receive, acknowledge, and establish immediate two-way communication in responding to emergency signals from individuals. The Vendor, immediately upon receiving a signal from the participant's PERS, shall retrieve the participant's automated data records, establish immediate two-way voice contact directly with the participant via the incoming signal, and contact the representative or take other emergency action as prescribed in the participant's record.
 - 5.5.2.3. Be capable of responding to multiple emergency signals simultaneously.
 - 5.5.2.4. Notify a third party, participant-designated representative (e.g., a neighbor,

SECTION TWO TECHNICAL SPECIFICATIONS

police, Emergency Medical System (EMS), etc.), to respond to an emergency via immediate telephone contact and without interrupting or terminating direct voice contact with the individual.

5.5.2.5. Provider shall verify resolution of the alert situation, document the alert for future reference and trending of alerts, and notify the Care Manager within twenty-four (24) hours or the next business day.

5.5.3. The emergency response operator shall monitor the provision of emergency service to verify that it has been provided and that the emergency no longer exists at the participant's residence.

5.6. Staffing and Administrative Policy

5.6.1. Staffing and Qualifications

5.6.1.1. Employees shall have the ability to communicate orally with the participant and resource personnel with whom they must work, and both orally and in writing with their supervisor.

5.6.1.2. Employees shall have the ability to read, write, follow written instructions, and to converse easily on the telephone.

5.6.1.3. Employees shall have the ability to install each type of PERS units provided by the Vendor.

5.6.1.4. Employees shall have training and/or paid or volunteer experience of one year or more, specifically related to the skills required to perform as an emergency response center employee.

5.6.2. Supervisors

5.6.2.1. Supervisors shall be capable of demonstrating and teaching all job skills needed to perform all aspects of the jobs of their employees.

5.6.2.2. Supervisors shall receive regular supervision by a designated administrative staff person.

5.6.2.3. It is expected that there will be a supervisor available during business hours.

5.6.3. Administrative Staff

5.6.3.1. Sufficient administrative staff shall be employed to ensure the sufficient

SECTION TWO TECHNICAL SPECIFICATIONS

and effective provision of service under the contract.

5.6.4. Consultant Staff

5.6.4.1. Appropriate other staff shall be available for consultation regarding response, operation, training, or other matters requiring professional input.

5.6.5. Training

5.6.5.1. In-service training sessions shall be offered to all direct participant contact employees. Subject areas covered should relate to relevant aspects of service delivery, trends, or advances in the field, or identified problems or gaps in knowledge.

5.6.5.2. The Vendor(s) shall use and have on file written training materials and procedures.

5.6.5.3. Staff shall receive training related to working with participants that have special mental health or other complex needs.

5.6.6. Limited English Proficiency (“LEP”)

5.6.6.1. The Vendor(s) shall take reasonable steps to ensure that persons with LEP have access to services.

5.6.6.2. Language assistance shall be provided using competent bilingual staff, staff interpreters, contracts or formal arrangements with local organizations providing interpretation or translation services, or technology and telephonic interpretation services.

5.6.7. Confidentiality

5.6.7.1. Vendor(s) shall maintain the security of participant files and always maintain the confidentiality of their information.

5.6.8. Participant Records

5.6.8.1. Vendor(s) shall maintain standardized individual files for each participant. The record keeping system shall ensure uniformity and consistency in documentation of service provision.

5.6.8.2. The participant’s record shall contain copies of the following information:

SECTION TWO TECHNICAL SPECIFICATIONS

- 5.6.8.2.1. Wellsky service order received from the BCAA Care Manager;
- 5.6.8.2.2. The start date of service; and
- 5.6.8.2.3. Documentation of:
 - 5.6.8.2.3.1. Each visit made to the PERS participant;
 - 5.6.8.2.3.2. Each activation/reactivation of the participant's PERS service;
 - 5.6.8.2.3.3. Each deactivation/suspension of the participant's PERS service;
 - 5.6.8.2.3.4. Each signal received from the participant's PERS;
 - 5.6.8.2.3.5. Worker's comments and observations concerning the participant's condition and his/her response to service, including the reporting of changes and/or problems to the supervisor. Changes and/or problems must be acknowledged by the supervisor; and
 - 5.6.8.2.3.6. Statements of follow-up action taken by the supervisor, including reporting to the Care Manager.
- 5.6.9. Back-Up Services
 - 5.6.9.1. The Vendor(s) shall have a sufficient number of designated alternate installers to deliver service in the absence of the regular installer.
 - 5.6.9.2. The Vendor(s)'s emergency service center shall have a number of designated alternate personnel to deliver service in the absence of regular personnel.
- 5.6.10. Change in Participant Status
 - 5.6.10.1. Changes in participant functioning, health, or situation shall be reported to the Care Manager as soon as possible, but no later than the end of the working day on which the change is noted.
- 5.6.11. Personnel Policies
 - 5.6.11.1. The Vendor(s) shall:

SECTION TWO TECHNICAL SPECIFICATIONS

- 5.6.11.1.1. Notify the BCAAA in writing of the changes at the administrative level in advance, if known, or immediately upon such change.
- 5.6.11.1.2. Maintain sound personnel policies structured to minimize personnel turnover which would adversely affect the delivery of service.
- 5.6.11.1.3. Assure availability of a staff person to accept phone communication during normal business hours, and availability of an answering service or on-call staff person to accept communication after business hours.

5.6.12. Exclusions

- 5.6.12.1. It is prohibited for workers to accept gifts, bequests, loans, and/or gratuities from consumers. This prohibition shall appear in the Vendor(s)'s signed agreements with staff, work rules, handbooks, training, job descriptions, and personnel policies.
- 5.6.12.2. Collection of voluntary contributions is specifically prohibited under this contract.
- 5.6.12.3. Workers shall not possess keys to a participant's home.
- 5.6.12.4. Violation of these rules is cause for dismissal by the Vendor. Failure of the Vendor to enforce these prohibitions is cause for termination of the Agreement.

5.6.13. Electronic Information Management

- 5.6.13.1. Vendor(s) shall have the capacity/ability to retrieve and submit data, information, reports, and other communication through electronic internet capabilities within a timeframe of not more than ten (10) business days.
- 5.6.13.2. Failure to receive or read BCAAA communications sent to the Vendor(s)'s email address within the timeframe listed in Paragraph 5.6.13.1 does not absolve the Vendor(s) from knowing, responding to, or complying with the content of that communication.

5.7. Responsibility/Expectations of the Program Office (BCAAA)

- 5.7.1. The BCAAA shall support the Vendor(s) in meeting service standards and requirements by providing the following:

SECTION TWO TECHNICAL SPECIFICATIONS

- 5.7.1.1. Timely communication and written correspondence regarding mandated applicable Pennsylvania Department of Aging and Berks County requirements, and any changes to these requirements that occur during the contract period;
 - 5.7.1.2. Program monitoring and evaluation to assure compliance with Pennsylvania Department of Aging and Berks County requirements specified in the terms of this contract;
 - 5.7.1.3. Timely communication and written correspondence regarding the outcome of program monitoring and evaluation activities; and
 - 5.7.1.4. Technical assistance as needed regarding program requirements.
- 5.8. Performance Evaluation
- 5.8.1. During the course of a contract year, BCAA shall monitor the Vendor(s) to validate Service Orders and Deliveries, and to ensure that the Vendor(s) is/are following the requirements of the Technical Specifications, applicable policies, and regulatory guidelines. Monitoring tools outlining acceptable evidence shall be used in evaluating compliance with regulatory requirements, service standards, documentation, and reporting requirements. The priorities for evaluation shall be:
 - 5.8.1.1. Compliance on items that potentially pose a direct threat to the safety of consumers and the quality of their care.
 - 5.8.1.2. Compliance on items that potentially pose an indirect threat to the quality of care for consumers and/or pose a risk management problem for the County.
 - 5.8.1.3. Compliance on administrative items.
 - 5.8.2. Vendors found to be noncompliant with these Specifications shall require a corrective action plan and progressive intervention.
 - 5.8.3. Participant Satisfaction
 - 5.8.3.1. Surveys of participants may be conducted by the BCAA. Participants from the Vendor(s) will be randomly selected to be surveyed. The expectation is that ninety percent (90%) of the surveyed participants for each Vendor will be satisfied with their service.

SECTION TWO TECHNICAL SPECIFICATIONS

6. Human Relations Act

The successful Bidder shall comply with the Pennsylvania Human Relations Act, 43 P.S. § 951, *et seq.*, which prohibit discrimination because of race, color, religious, creed, ancestry, age, sex, national origin, or no-job related handicap or disability or the use of a guide or support animal because of blindness, deafness physical handicap, by employers, employment agencies, labor organizations, contractors and others.

7. Pennsylvania Prevailing Wage Act

If the Pennsylvania Prevailing Wage Act, 43 P.S. § 165-1, *et seq.* is applicable to the supply of the Goods and Services to the County, and the general prevailing minimum wage for each trade, as determined by the Secretary of Labor and Industry, is the minimum that shall be paid to any employee. The complete prevailing minimum wage predetermination, as established for this project, is available in hard copy and can be requested from the County's point-of-contact for this project.

8. Steel Products Procurement Act

Special attention is drawn to the provisions of the Commonwealth of Pennsylvania Steel Products Procurement Act 73 P.S. § 1881, *et. Seq.*, and Trade Practice Act, 71 P.S. § 773.101, *et seq.*, with respect to any steel, aluminum or cast-iron product (including machinery and equipment) used in connection with Goods and Services. These laws include certain limitations and prohibitions on the source countries for certain raw products. The successful Bidders must provide the County with written certification of the source of steel products used before any payments can be made under the Agreement.

--- END OF SPECIFICATIONS ---

**ATTACHMENT A
BID FORM**

ITB #25-07-MZ - Personal Emergency Response Systems

Important note to Bidders: It is essential that the submitted Bid complies with all of the requirements contained in Section One, Part Three of the ITB.

This Bid is submitted to: County of Berks
c/o Berks County Controller
Berks County Services Center
633 Court Street, 12th Floor
Reading, PA 19601

This Bid is submitted on _____, 20____.
This Bid is valid for sixty (60) days from the date of Bid Opening.

This Bid is submitted by:

Company Name: _____
Company Address: _____

Main Telephone: _____ Main Fax: _____

Communications and questions concerning this Bid are to be directed to:

Contact Name / Title: _____
Contact Telephone: _____ Fax: _____
Contact Email: _____

In the event our company is awarded the Agreement as a result of the ITB and this Bid, the following individual will serve as project liaison/manager:

Name / Title: _____
Office Address: _____

Telephone: _____ Fax: _____
Email: _____

Receipt of Amendments (if applicable)

In submitting this Bid, Bidder represents that they have received and examined the following ITB Amendments:

Amendment #____ Amendment #____ Amendment #____ Amendment #____

ATTACHMENT A BID FORM

Checklist - Attachments to Bid Form

The following documents are attached to and made a part of this Bid (check all that apply):

- Piggyback Form – ITB Attachment B
- Non-collusion Affidavit – ITB Attachment C
- Reference Form – ITB Attachment D
- Sample Certificate of Insurance
- Worker Protection and Investment Certification Form BOP 2201 - ITB Attachment K
- Specification Sheet(s) and/or Proof of Equivalency

Delivery Schedule

Mode of transport (check all that apply):

- common carrier
- package express (i.e. UPS, RPS, etc.)
- in-house fleet
- other _____

Quoted Pricing

Unless items or services are specifically excluded in the Bid, the County shall deem the Bid to be complete and shall not be charged any costs above and beyond the Bid amount. The successful Bidder(s) shall bill at actual usage quantities. Deducts/Addds shall be made at quoted unit prices. Installation services shall be billed in the month that the PERS units are ordered and installed.

Prices as bid herein shall remain valid throughout the entire term of the Agreement. The estimated quantity is provided for purposes of comparing Bids. It is no guarantee for the procurement of any certain quantity or quantities of Goods and Services. The County reserves the right to order more or less Goods and Services throughout the entire term of the Agreement and the Bidder agrees to supply all Goods and Services requisitioned by the County through a Purchase Order at these Bid prices throughout the entire term of the Agreement.

(A) Item No.	(B) Item Offered	(C) Estimated Quantity	(D) Unit Price	(E) Extended Price (C x D)
1.	Mobile/GPS PERS, With Fall Detection	70	\$	\$
2.	Cellular In-Home PERS, With Fall Detection	25	\$	\$
3.	Standard In-Home PERS, With Fall Detection	5	\$	\$
Total Bid Price FOB Destination (Sum: items 1 through 3)				\$

ATTACHMENT A BID FORM

Authorized Signature of Bidder

The Bid Form must be signed by an individual with actual authority to bind the company.

Company Type (check one):

Sole Proprietorship Partnership Corporation

Bidder attests that:

(1) they have thoroughly reviewed the County's Invitation to Bid # 25-07-MZ and that this Bid is submitted in accordance with the ITB requirements; and

(2) they have visited and are familiar with the site facilities, site conditions, the pertinent state and local codes, state of labor and material markets, and has made do allowance in the Bid for all contingencies or conditions.

COMPANY NAME

FEDERAL ID#

STREET ADDRESS

PO BOX

CITY

STATE

ZIP

TELEPHONE #

FAX #

SIGNATURE (**see note below)

SIGNATORY'S NAME (printed)

SIGNATORY'S TITLE (printed)

WITNESS'S SIGNATURE (**see note below)

WITNESS'S NAME (printed)

WITNESS'S TITLE (printed)

****For Corporations: The Bid must be signed by the President or Vice President and the signature must be attested by the Corporate Secretary or Treasurer. If any employee other than the President or Vice President signs on behalf of the corporation, or if the President's or Vice President's signature is not attested to by the Corporate Secretary or Treasurer, a copy of the corporate resolution authorizing said signature(s) must be attached to this Bid. Failure to attach a copy of the appropriate authorization, if required, may result in rejection of the Bid.**

ATTACHMENT B PIGGYBACK FORM

During the term of the Agreement resulting from Invitation to Bid # 25-07-MZ - Personal Emergency Response Systems, the County of Berks would like to afford the same prices, terms and conditions to any current or future members of the Berks County Cooperative Purchasing Council (BCCPC); the Southeastern Pennsylvania Counties Cooperative Purchasing Board (SPCCPB); and any political subdivision of the Commonwealth of Pennsylvania even though their requirements are not included in the quantities listed on the Bid. The BCCPC consists of municipalities (townships, boroughs, etc.) located within Berks County. The SPCCPB consists of the Counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, and Northampton.

Bidders must check one of the following options under each category below. A non-affirmative response will in no way have a negative impact on the County's evaluation of the Bid.

BCCPC

_____ I *will* offer the quoted prices to all authorized members of the BCCPC during the term of the County's Agreement.

_____ I *will not* offer quoted prices to all authorized members of the BCCPC.

SPCCPB

_____ I *will* offer the quoted prices to all authorized members of the SPCCPB during the term of the County's Agreement.

_____ I *will not* offer quoted prices to all authorized members of the SPCCPB.

PA Political Subdivisions

_____ I *will* offer the quoted prices to all political subdivisions of the Commonwealth of Pennsylvania during the term of the County's Agreement.

_____ I *will not* offer the quoted prices to all political subdivisions of the Commonwealth of Pennsylvania during the term of the County's Agreement.

Company Name: _____

Authorized Signature: _____

Name (printed): _____

Title: _____

Date: _____

INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

1. This Non-Collusion Affidavit is material to any contract awarded pursuant to this Bid. According to the Pennsylvania Antibid-Rigging Act, 62 Pa. C.S.A § 4501, et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with Bids.
2. This Non-Collusion Affidavit must be executed by the member, officer or employee of the Bidder who makes the final decision on prices and the amount quoted in the Bid.
3. Bid 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 examine it carefully 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 Bidder with responsibilities for the preparation, approval or submission of this Bid.
4. In the case of a Bid submitted by a joint venture, each party to the venture must be identified in the Bid and an Affidavit must be submitted separately on behalf of each party.
5. The term “complementary Bid” as used in the Affidavit has the meaning commonly associated with that term in the bidding process and includes the knowing submission of Bids lower than the Bid of another firm, any intentionally low or non-competitive Bid and any other form of Bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions may result in disqualification of the Bid immediately after opening of the Bid.

**ATTACHMENT C
NON-COLLUSION AFFIDAVIT**

State of _____:

:s.s.

County of _____:

Re: ITB # 25-07-MZ - Personal Emergency Response Systems

I state that I am _____ (Title) of _____ (Name of Firm) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this Bid.

I state that:

- (1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder.
- (2) Neither the price(s) nor amount of this Bid and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other firm or person who is a Bidder or potential Bidder and they will not be disclosed before Bid Opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from Bidding on this Agreement or to submit a Bid lower than this Bid or to submit any intentionally low or non-competitive Bid or other form of complementary Bid.
- (4) The Bid of my firm is made in good faith and not pursuant to any agreement or discussion with or inducement from any firm or person to submit a complementary or other non-competitive Bid.
- (5) _____ (Name of Firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ (Name of Firm) understands 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 this Bid is submitted. I understand, and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the County of Berks of the true facts relating to the submission of Bids for this Agreement.

Signature: _____

Title: _____

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____, 20__

Notary Public

My Commission Expires: _____

ATTACHMENT D REFERENCE FORM

Bidder: _____

Each Bidder must submit at least three references to whom the Bidder has provided Personal Emergency Response Systems within the preceding 24 months, and for whom Bidder has provided a similar volume of Goods and Services to that being requested by the County in this ITB. References must be provided even if Bidder is a current vendor of the County.

1. Company Name: _____
Address: _____

Contact Person: _____
Contact Person's Title: _____
Tel / Fax Nos.: _____
Email: _____

2. Company Name: _____
Address: _____

Contact Person: _____
Contact Person's Title: _____
Tel / Fax Nos.: _____
Email: _____

3. Company Name: _____
Address: _____

Contact Person: _____
Contact Person's Title: _____
Tel / Fax Nos.: _____
Email: _____

ATTACHMENT E
BID BOND

Not Applicable

**ATTACHMENT F
CONSENT (OR AGREEMENT) OF SURETY**

Not Applicable

ATTACHMENT G NO BID REPLY FORM

To assist the County in obtaining good competition, we ask that each firm who has received Invitation to Bid # 25-07-MZ, **but does not wish to submit a Bid**, state their reason(s) below and email this form to the County’s Point-of-Contact for this ITB at Mzaki@berkspa.gov, or mail to the County of Berks, Attn: Director of Contracts and Procurement, 633 Court Street, 13th Floor Services Center, Reading, PA 19601.

Unfortunately, we must offer a “No Bid” at this time because:

_____ 1.	We do not wish to participate in the Bid process.
_____ 2.	We do not wish to Bid under the terms and conditions of the Invitation to Bid document. Our objections are: _____ _____
_____ 3.	We do not feel we can be competitive.
_____ 4.	We cannot submit a Bid because of the marketing or franchising policies of our company.
_____ 5.	We do not wish to sell to the County of Berks. Our objections are: _____ _____
_____ 6.	We do not provide the items/services for which Bids are requested.
_____ 7.	Other: _____ _____ _____

COMPANY NAME: _____

ADDRESS: _____

SIGNATURE: _____

NAME (printed): _____

TITLE: _____

ATTACHMENT H

FORM OF AGREEMENT AND GENERAL CONDITIONS

AGREEMENT # TBD

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 Personal Emergency Response Systems in accordance with the requirements set forth in the County’s Invitation to Bid # 25-07-MZ [inclusive of all Amendments] (“ITB”), and Vendor’s Bid 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 ITB.

2. Engagement

Subject to the terms and conditions set forth in this Agreement, the County hereby engages the Vendor to provide the Goods and Services set forth in the ITB on behalf of the County consistent with the terms of this Agreement and as further set forth in subsequently issued Purchase Orders.

3. Term of Agreement

- 3.1 This Agreement shall be effective July 1, 2025 through June 30, 2028 unless terminated or extended in accordance with the terms and conditions of this Agreement.
- 3.2 With the consent of the Vendor, the County reserves the option to renew the Agreement for three (3) additional one (1) year terms at the Bid prices. Prior to the end of each one-year term, the County will notify the Vendor in writing if County would like to renew the Agreement. Upon receipt of the Vendor’s written acceptance to renew the Agreement, the Agreement shall then renew for an additional one (1) year from the prior expiration date. Such acceptance shall be automatically incorporated in the Agreement Documents.
- 3.3 The County reserves the right to extend the term of the Agreement period for up to three (3) months to prevent a lapse of coverage and only for the time necessary to issue and award a new Invitation to Bid.

4. Time is of the Essence

Time is of the essence in the performance of this Agreement. The schedule for the performance of Goods and Services is identified in Section 5, Delivery or Performance Requirements of the ITB. If the completion of Goods and 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 Goods and Services from another vendor. The Vendor shall reimburse the County for the costs to procure substitute Goods and Services.

ATTACHMENT H

FORM OF AGREEMENT AND GENERAL CONDITIONS

5. Supply and Inspection of Goods and Services

5.1 This Agreement is for an indefinite quantity of Goods and Services. The County reserves the right to order more or less Goods and Services throughout the entire term of the Agreement and the Bidder agrees to supply all Goods and Services requisitioned by the County through a Purchase Order at the Bid prices incorporated in this Agreement throughout the entire term of the Agreement. The Vendor shall supply Goods and Services to the County meeting the quality set forth in the ITB in quantities set forth in each Purchase Order issued by the County for the procurement of Goods and Services.

5.2 Goods and Services received by the County shall not be deemed accepted until the County has had a reasonable opportunity to inspect. Goods and Services that are discovered to be defective or non-conforming to the agreed upon specifications may be rejected upon initial inspection or at any later time if the defects or non-conformity were not reasonably discoverable at the time of initial inspection. Within fifteen (15) days of receipt of notification of rejection, Vendor shall remove rejected Goods and Services from the premises without expense to the County. Rejected Goods and Services not removed within fifteen (15) days will be regarded as abandoned and the County shall have the right to dispose of such Goods and Services as its own property and shall retain that portion of the proceeds of any sale which represents the County's costs and expenses in regard to the storage and sale of the Goods and Services. Upon notification of rejection, the Vendor shall immediately replace all such rejected Goods and Services with others conforming to the specifications and which are not defective. If the Vendor fails, neglects or refuses to do so, the County shall then have the right to purchase in the open market a corresponding quantity of such Goods and Services and deduct from any monies due or that may thereafter become due to the Vendor, the difference between the price stated and the actual cost thereof to the County. If the amount due the Vendor is insufficient to meet such expenses, the Vendor shall be liable for the excess and the County may proceed against the Vendor through appropriate legal action.

6. Compensation

The Vendor shall be paid the unit prices for Goods and Services supplied to the County in accordance with the prices set forth in the Bid, as follows:

- (Table shall be inserted here with unit prices)

ATTACHMENT H
FORM OF AGREEMENT AND GENERAL CONDITIONS

7. Notices

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: Berks</i>	<i>Vendor:</i>
Attention	Jessica Jones	
Title	Director, Berks County Area Agency on Aging	
Address	400 E. Wyomissing Avenue Mohnton PA, 19540	
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 and packing lists must reference the above-noted Agreement number.** Original invoices shall be submitted to: County of Berks, Area Agency on Aging, Attn: Fiscal Manager, Berks County Area Agency on Aging, 400 E. Wyomissing Avenue, Mohnton, PA 19540.
- 8.2 Vendor may submit invoices no more than once per month for Goods and Services supplied under this Agreement. No advance payments or billings are allowed. Payment by the County shall require the submittal of an itemized invoice of all Goods and Services supplied. 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.

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 Umbrella/Excess Liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate; and

ATTACHMENT H

FORM OF AGREEMENT AND GENERAL CONDITIONS

- 9.1.4 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.
- 9.1.5 Abuse and Molestation Liability insurance with a limit of not less than \$100,000.
- 9.2 Prior to commencement of performance of this Agreement, Bidder shall furnish to the County a certificate of insurance evidencing all required coverage in 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 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. Bidder's Commercial General Liability and Umbrella/Excess 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 project 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 Manager or Sr. 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 1X 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 contract or until completion of all duties to be performed hereunder by the Bidder, whichever shall occur later.

10. Precedence

Where a conflict exists between these General Conditions and the ITB as to Goods and Services, the Vendor shall provide the higher quality or quantity of Goods and Services, otherwise the terms of these General Conditions shall prevail as to any conflict among the Agreement Documents. In the event any term of a Purchase Order conflicts with any other term within the Agreement Documents, such other term in the Agreement Documents 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 Taxes and Pennsylvania Sales Taxes, as a political subdivision of the Commonwealth of Pennsylvania. The County's registration number with the Internal Revenue Service is 23-6003049. Net prices shown in the Bid as incorporated in these General Conditions shall exclude such Federal and State taxes. This statement is not meant to

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exempt the Vendor from the payment of sales or use tax required to be paid with respect to its purchase or use of tangible personal property used or transferred in connection with the performance herein.

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 Vendor pursuant to this project. Employees or agents of the parties shall not divulge, transfer, assign, sell or otherwise convey the other party's proprietary methodologies (designated in writing by each party as proprietary) in any form to a third party, person or organization except as may be specifically agreed to in writing by the affected party.

14. Patents, Copyrights, Trademarks

Vendor warrants, represents and covenants that the Goods and Services 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 Goods and 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 County 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 in compliance with this Agreement.

16. Warranty

16.1 Goods and Services furnished as a result of this Agreement, whether manufactured or fabricated by Vendor or a third party, shall (a) be new; (b) be first quality; (c) strictly conform to the specifications and samples; and (d) be free from defects in materials and workmanship. Vendor shall be required to promptly replace Goods and Services, after receiving notification from the County of defects or nonconformance.

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16.2 Goods manufactured by a third party and supplied by Vendor shall carry all third-party warranties. All warranties shall survive any inspection, delivery, acceptance or payment.

16.3 Services performed as a result of this Agreement, whether performed by Vendor or a third party, shall be performed 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 of services performed. All warranties shall survive inspection, delivery, acceptance and payment.

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 Vendors' 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 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. 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 Goods and Services supplied 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 Goods and Services, but in no event shall Vendor be entitled to recover lost or expected profit.

20. Termination for Cause

20.1 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.

20.2 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

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give the County written notice of such occurrence as soon as is legally permissible. If such occurrence or proposed occurrence is unacceptable to the County, the County may terminate this Agreement immediately upon written notice thereof to Vendor.

- 20.3 If the County terminates this Agreement for cause, in whole or in part, it may acquire, correct, or replace Goods and 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 make an equitable adjustment in the price. This paragraph shall not operate or bar the County from exercising any other rights or remedies to which it may be entitled to under the Pennsylvania Uniform Commercial Code, Article 2, 13 Pa.C.S.A., Section 2101 et seq.

21. 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.

22. 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.

23. Assignment

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. 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.

25. 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 supply of Goods and Services. The Vendor shall give any and all necessary formal notices required in conjunction with the lawful supply of the Goods and Services.

26. Health and Safety

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

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- 26.1 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;
- 26.2 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;
- 26.3 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;
- 26.4 properly maintain, inspect and supervise its designated work area and roadways to keep them in reasonably safe condition. This responsibility includes Vendor's right and duty to conduct reasonable and necessary maintenance in the work area and of the roadways to prevent unsafe work conditions from existing. Vendor shall regularly conduct safety audits and inspections to ensure compliance with its responsibility to maintain a reasonably safe work area;
- 26.5 supply the applicable safety data sheets on all Goods and Services supplied to the County or used on County property;
- 26.6 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 safety data sheet(s); and
- 26.7 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.

27. Equal Employment Opportunity

- 27.1. 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 the paragraph.
- 27.2. 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

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without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.

- 27.3. 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.
- 27.4. 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.
- 27.5. 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.
- 27.6. 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.
- 27.7. 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.
- 27.8. Vendor shall include the provisions of this non-discrimination clause in every Agreement, so that such provisions will be binding upon each subcontractor.
- 27.9. 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.

28. 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.

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29. Employees of Vendor

- 29.1 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.
- 29.2 Vendor shall advise its employees and the employees of its subcontractors and agents that:
- 29.2.1 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 supplying Goods and 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.
- 29.2.2 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.

30. 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.

31. Subcontractors

- 31.1 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.
- 31.2 The Vendor may obtain the current list of suspended and debarred Vendors by contacting the:

Department of General Services

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Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125

32. 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.

33. 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.

34. Regulations

34.1. General Obligations

- 34.1.1.** The Program is being funded in part by grant money provided by the United States Department of Labor and/or the United States Department of Health & Human Services. Vendor shall perform Services and ensure that its Subcontractors perform Services in strict accordance with the requirements and conditions set forth in all grant documents applicable to the Program. If any grant money is forfeited as a direct or indirect result of Vendor's or Subcontractor's performance or non-performance of Services, the Contract Price shall be reduced in the amount equal to the forfeited grant monies.
- 34.1.2.** Vendor shall certify that, as of the date of its execution of the Contract Documents, that Vendor, nor any Subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth of Pennsylvania or any other state or federal governmental entity, instrumentality, or authority and, if the Vendor cannot so certify, then it agrees to submit, along with its Proposal, a written explanation of why such certification cannot be made.
- 34.1.3.** Vendor shall comply with the Family Support Act as implemented by the Commonwealth of Pennsylvania through the Employment, Advancement & Retention Network (EARN) Program.
- 34.1.4.** Vendor shall adhere to and, if requested, agree to in writing, all contractor integrity provisions required by any grant associated with this Program.

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34.1.5. Vendor shall take affirmative steps, as such steps are set forth in 44 CFR §13.36(e) to assure that minority firms, women's business enterprises, and labor surplus are firms are used when possible.

34.1.6. Vendor or subcontractor shall certify it is in compliance with the current Pennsylvania Unemployment Compensation and Worker's Compensation Laws.

34.1.7. Vendor shall comply with all pertinent federal, state, and local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service and other limitations on the purchase of the services established in this Agreement are subject to modification by amendments to Federal, State and Local laws and regulations without further notice to the Vendor.

34.2. Federal Procurement Compliance

34.2.1. Vendor shall not discriminate on the basis of race, color or national origin in any activity associated with this Program in accordance with Title VI of the Civil Rights Act of 1964, July 2, 1964, P.L. 88-352, Title VI, 42 U.S.C. §2000d.

34.2.2. Vendor shall not discriminate on the basis of age in any activity associated with this Program in accordance with the Age Discrimination Act, Nov, 28, 1975, P.L. 94-135, as amended, 42 U.S.C. § *et seq.*

34.2.3. Vendor shall not discriminate on the basis of disability in any activity associated with this Program in accordance with the Section 504 of the Rehabilitation Act of 1973, Sept. 26, 1973, P.L. 93-112, Title V, § 504,29 U.S.C. § 794.

34.2.4. 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.

34.2.5. Vendor shall not discriminate on the basis of disability in any activity associated with this Program in accordance with the Americans With Disabilities Act of 1990, P.L. 101-336, 42 U.S.C. §12101 *et seq.*, and federal regulations set for at 28 C.F.R. Part 35.

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- 34.2.6.** Vendor shall not discriminate on the basis of sex in any activity associated with this Program in accordance with Nontraditional Employment of Women’s Act of 1991.
- 34.2.7.** Vendor shall provide an equal opportunity for employment in all contracts and subcontracts associated with this Program in accordance with Executive Order 11246, dated September 24, 1965, as amended by Executive Order 11375, dated October 13, 1967, and as supplemented in Department of Labor Regulations set forth in 40 C.F.R. Part 60.
- 34.2.8.** No facilities that will be used to perform the Services may be listed on the List of Violating Facilities maintained by the Environmental Protection Agency and the Vendor, upon request of the County, shall provide a certification verifying the same.
- 34.2.9.** Vendor shall inform all parties that this Program is being supported in part by Federal funding when it issues any statements, press releases, requests for proposals, bid solicitations and other similar documents related to the Program.
- 34.2.10.** Vendor shall comply with all applicable mandatory standards and policies relating to energy efficiency which are contained in the applicable state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- 34.2.11.** The United States Department of Labor, United States Health & Human Services, Comptroller General of the United States, the Owner, or their duly authorized representatives shall have access to any books, documents, papers, and records of the Vendor which are directly pertinent to Contract for the purpose of making audit, examination, excerpts, and transcriptions. Vendor shall incorporate in each of its subcontracts a provision requiring its Subcontractors and Sub-contractors to provide the United States Department of Labor, United States Department of Health & Human Services, Comptroller General of the United States, the County, or their duly authorized representatives access to any books, documents, papers, and records which are directly pertinent to Contract for the purposes of making audit, examination, excerpts, and transcriptions. Vendor shall (and require each Subcontractor and Sub-subcontractor to) retain all records related to the Program or the Contract for ten (10) years after Final Payment from Owner to Vendor has been remitted and all other pending matters related to the Program or Contract are closed.
- 34.3.** Notices of Federal Statutes, Regulations and Rules
- 34.3.1.** The Vendor is hereby notified that the following federal statutes, regulations, and rules apply to the Services as federally funded Program:
- 34.3.2.** Environmental
- 34.3.2.1.** Archaeological and Historic Preservation Act of 1974, 16 USCS §469a-1 et seq., (P.L. 86-523, as amended).

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- 34.3.2.2.** Protection and Enhancement of Cultural Environment, (Executive Order 11593).
- 34.3.2.3.** National Historic Preservation Act of 1966, 16 USCS §470, (P.L. 89-665, Section 106, as amended).
- 34.3.2.4.** Clean Air Act of 1955, 42 USCS §7401 et seq., (P.L. 84-159, as amended).
- 34.3.2.5.** Federal Water Pollution Control Act of 1948 (also known as the “Clean Water Act”) (33 USCS §1251 et seq., P.L. 845, as amended).
- 34.3.2.6.** Coastal Barrier Resources Act, 16 USCS §3501 et seq., (P.L. 97-348).
- 34.3.2.7.** Coastal Zone Management Act of 1972, 16 USCS §1451 et seq., (P.L. 92-583, as amended).
- 34.3.2.8.** Endangered Species Act of 1973, 16 USCS §1531 et seq., (P.L. 93-205, as amended).
- 34.3.2.9.** Fish and Wildlife Coordination Act, (P.L. 85-624, as amended).
- 34.3.2.10.** Floodplain Management, (executive Order 11988, as amended by Executive Order 12148).
- 34.3.2.11.** Environmental Justice, (Executive Order 12898).
- 34.3.2.12.** Protection of Wetlands, (Executive Order 11990).
- 34.3.2.13.** Farmland Protection Policy Act, 7 USCS §4201 et seq., (P.L. 97-98).
- 34.3.2.14.** National Environmental Policy Act of 1969, (P.L. 91-190).
- 34.3.2.15.** Safe Drinking Water Act of 1974, (P.L. 93-523, Section 1424(e), as amended).
- 34.3.2.16.** Wild and Scenic Rivers Act of 1968, 16 USCS §1271 et seq., (P.L. 90-542, as amended).
- 34.3.2.17.** Environmental Protection Agency regulations, Title 40 of the Code of Federal Regulations (including, without limitations, 40 CFR part 15).
- 34.3.2.18.** Procurement of Recovered Materials - §200.322.
 - 34.3.2.18.1.** 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

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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 \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; 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.

34.4. Social

- 34.4.1.** Promoting the Use of Women’s and Minority Business Enterprise, (Executive Orders 11625, 12138 and 12342).
- 34.4.2.** Civil Rights Act of 1964, Title VI, (P.L. 88-352).
- 34.4.3.** Title IX of the Education Amendments of 1972, as amended, 20 USCS §1681 – 1685 and 1686, Prohibition against Sex Discrimination.
- 34.4.4.** Rehabilitation Act of 1973, 29 USCS §794, (P.L. 93-112 Section 504, as amended. Executive Orders 11914 and 11250).
- 34.4.5.** Section 13 of the Federal Water Pollution Control Act Amendments of 1972, (P.L. 92-500), (“Clean Water Act”).
- 34.4.6.** Age Discrimination Act of 1975, 42 USCS §6101-6107, (P.L. 94-135, as amended).
- 34.4.7.** Drug Free Workplace Act of 1988, (P.L. 100-690).
- 34.4.8.** Drug Abuse Office and Treatment Act of 1972, (P.L. 92-255).
- 34.4.9.** Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (P.L. 91-616).
- 34.4.10.** Equal Employment Opportunity, (Executive Order 11246, of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- 34.4.11.** 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.
- 34.4.12.** The Vendor agrees to comply with 28 CFR Part 38, “Partnerships with Faith Based and Other Neighborhood Organizations.”
- 34.4.13.** 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

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driving any vehicle during the course of performing work funded by this contract and to establish workplace safety policies and conduct education, awareness and other outreach to decrease crashes caused by distracted drivers.

34.4.14. Public Health Service Act of 1912, 42 USCS §290 dd-3 and §290 ee-3, §523 and §527.

34.4.15. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, (P.L. 100-590).

34.5. Economic

34.5.1. Procurement Prohibitions under Clean Air Act, Section 306; Clean Water Act, Section 508; and Executive Order 11738.

34.5.2. Debarment and Suspension, (Executive Order 12549).

34.5.3. Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-7, as supplemented by Department of Labor regulations, 29 CFR Part 5.

34.5.4. Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-330, as supplemented by Department of Labor regulations 29 CFR Part 5.

34.6. Miscellaneous

34.6.1. Vendor must be in compliance with the following acts:

34.6.1.1. Demonstration Cities and Metropolitan Development Act of 1996, (Executive Order 12372, P.L. 89-754, as amended).

34.6.1.2. Uniform Relocation and Real Property Acquisition Policies Act of 1970, Titles II and III, (P.L. 91-646, as amended).

34.6.1.3. Anti-Lobbying, 31 USCS §1352, 40 CFR Part 34.

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

34.6.1.4.1. Vendors with an award exceeding \$100,000.00 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 award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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- 34.6.1.5.** In accordance with 2 CFR Part 200, Section 200.318, Vendor attests to the following:
- 34.6.1.5.1.** 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.
 - 34.6.1.5.2.** 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.
 - 34.6.1.5.3.** 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.
- 34.6.1.6.** Vendor certifies that no Federal Appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 34.6.1.6.1.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - 34.6.1.6.2.** The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
 - 34.6.1.6.3.** This certification is a material representation of fact, upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.

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Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

- 34.6.1.7.** Copeland “Anti-Kickback” Act, 18 U.S.C. § 874, as supplemented in Department of Labor regulations, 29 CFR Part 3.
- 34.6.1.8.** Flood Disaster Protection Act of 1973, (Section 102(a), P.L. 93-234).
- 34.6.1.9.** Department of Labor and Department of Health and Human Services Requirements and Regulations pertaining to reporting (including, without limitation, such reporting requirements set forth in Title 6 and Title 44 of the Code of Federal Regulations).
- 34.6.1.10.** Department of Labor and Department of Health & Human Services Requirements and Regulations pertaining to patent rights, copyrights, and rights in data (including, without limitation, such requirements set forth in Part 3027 of Title 48 of the Code of Federal Regulations).
- 34.6.1.11.** The Workforce Investment Act of 1998 and subsequent implementing regulations and clarifications.
- 34.6.1.12.** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform) and subsequent reauthorization.
- 34.6.1.13.** The Trade Act of 1974 (as amended) and Trade Act of 2002.
- 34.6.1.14.** The Workforce Innovation and Opportunity Act will become effective July 1, 2015 and will replace the Workforce Investment Act.
 - 34.6.1.14.1.** Funds provided to employees for work-based training, as described in WIOA Subpart F, must not be used to directly or indirectly assist, promote, or deter union organizing.
- 34.6.1.15.** The Service Contract Act (as amended), 41 U.S.C. 351 et seq., Title 29, Part 4 Labor Standards for Federal Service Contracts.
- 34.6.1.16.** 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 Nonprofits Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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34.7. Audit Requirements

- 34.7.1.** 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.
- 34.7.2.** If the Vendor is a local government or non-profit organization and expends total federal awards of \$750,000 or more during its fiscal year, 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”.
- 34.7.3.** If the Vendor is a for-profit organization and expends total federal awards of \$750,000 or more during its fiscal year, 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.
- 34.7.4.** If the Vendor expends total federal awards of less than \$750,000 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.
- 34.7.5.** 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.
- 34.7.6.** 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.
- 34.7.7.** 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.

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34.7.8. 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.

34.7.9. 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.

35. Confidentiality of Protected Information

35.1. 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 Vendor agrees at all times to treat any protected health information (as defined by HIPAA), created by or disclosed or otherwise made available to the Vendor 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 the Agreement if it determines that there has been a material breach of this provision.

35.2. To the extent that County meets the definition of a “Covered Entity” or “Business Associate” (as such terms are defined under HIPAA) and the 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 Vendor and County shall enter into a HIPAA Business Associate Agreement in a form satisfactory to County as set forth in Attachment A, 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

36. 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 appeal process must be followed by the Vendor.

37. 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 Berks County Area Agency on Aging and include the statement, “This program is funded, in part, under an Agreement with money allocated by the Pennsylvania Department of Human Services and the Berks County Commissioners, through the Berks County Area Agency on Aging.”

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38. Earnings of Funds

- 38.1.** 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.
- 38.2.** Should the “County” or “Department” or “Berks County Area Agency on Aging” 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.

39. Integrity Provisions

- 39.1 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.
- 39.2 In furtherance of this policy, Vendor agrees to the following:
- 39.2.1 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.
- 39.2.2 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.
- 39.2.3 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.
- 39.2.4 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.
- 39.2.5 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

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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.

- 39.2.6 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.
- 39.2.7 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.
- 39.2.8 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.
- 39.2.9 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>.
- 39.2.10 Restrictions and certifications regarding non-disclosure agreements and related matters.
- 39.2.10.1 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.

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- 39.2.10.2 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.
- 39.2.10.3 In accepting this Agreement, the Vendor
- 39.2.10.3.1 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
 - 39.2.10.3.2 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.
- 39.2.10.4 If the Vendor does or is authorized to make subawards (“subgrants”), or engage a procurement contractor to perform services under this Agreement:
- 39.2.10.4.1 it represents that
 - 39.2.10.4.2 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
 - 39.2.10.4.3 it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
 - 39.2.10.4.4 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

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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.

39.2.11 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:

- 39.2.11.1 Approved in writing by the County prior to its disclosure; or
- 39.2.11.2 Directed by a court or other tribunal of competent jurisdiction unless the agreement requires prior County approval; or
- 39.2.11.3 Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
- 39.2.11.4 Necessary for purposes of Vendor's internal assessment and review; or
- 39.2.11.5 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
- 39.2.11.6 Permitted by the valid authorization of a third party to whom the information, documents, reports, data or records pertain; or
- 39.2.11.7 Otherwise required by law.

39.2.12 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:

- 39.2.12.1 Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- 39.2.12.2 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

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partner, individual owner, or employee or other individual of entity associated with:

39.2.12.2.1 Obtaining;

39.2.12.2.2 Attempting to obtain; or

39.2.12.2.3 Performing a public grant or subgrant Vendor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.

39.2.12.3 Violation of federal or state antitrust statutes.

39.2.12.4 Violation of any federal or state law regulating campaign contributions.

39.2.12.5 Violation of any federal or state environmental law.

39.2.12.6 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.

39.2.12.7 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.

39.2.12.8 Violation of any federal and state law prohibiting discrimination in employment, including but not limited to 28 CFR Part 42.

39.2.12.9 Debarment by any agency or department of the federal government or by any other state.

39.2.12.10 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.

39.2.13 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:

39.2.13.1 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

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immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

- 39.2.13.2 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.
- 39.2.14 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.
- 39.2.15 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.
- 39.2.16 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.
- 39.2.17 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.
- 39.2.18 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 any one shall not preclude

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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.

39.2.19 For purposes of these Integrity Provisions, the following terms shall have the meanings found in this Clause 36.

39.2.19.1 “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.

39.2.19.2 “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.

39.2.19.3 “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.

39.2.19.4 “Financial interest” means:

39.2.19.4.1 Ownership of more than a five percent interest in any business; or

39.2.19.4.2 Holding a position as an officer, director, trustee, partner, employee or holding any position of management.

39.2.19.5 “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.

39.2.19.6 “Immediate family” means a spouse and any unemancipated child.

39.2.19.7 “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.

39.2.19.8 “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

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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.

40. Debarment/Tax Liabilities

40.1 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.

40.1.1 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.

40.1.1.1 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.

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

40.1.2 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.

40.1.3 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;

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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.

40.1.4 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:

40.1.4.1 Via e-mail through the MA Provider Compliance form at the following link:

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

40.1.4.2 By U.S. mail at the following address:

Department of Human Services
Office of Administration
Bureau of Program Integrity
Commonwealth of Pennsylvania
P.O. Box 2675
Harrisburg, PA 17105-2675

40.1.4.3 By fax at: 1-717-772-4655 or 1-717-772-4638.

40.1.4.4 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.

40.1.5 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.

40.1.6 Vendor shall periodically conduct self-audits to determine compliance with this requirement.

40.1.7 Vendor shall provide evidence of compliance with these requirements to the County within ten (10) days following a request by the County.

40.1.8 The Vendor may obtain a current list of suspended and debarred Commonwealth providers by accessing:

40.1.8.1 The Commonwealth of Pennsylvania - Debarment and Suspension List online at the website below:

<https://www.dgs.internet.state.pa.us/debarmentsearch/debarment/index>

or contacting the:

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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

40.1.8.2 The Worker Protection and Labor Law Non-Compliance List online at the website below:

<https://www.dli.pa.gov/Pages/Non-Compliance-List.aspx>

40.1.9 It shall be the responsibility of the Vendor to determine and utilize the appropriate site for said database.

41. Examination of Records

- 41.1.** 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 and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing ratios 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 Berks County Area Agency on Aging. 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.
- 41.2.** 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 Berks County Area Agency on Aging.
- 41.3.** 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 Berks County Area Agency on Aging 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.

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- 41.4.** 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 Berks County Area Agency on Aging.
- 41.5.** 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 (4) 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.
- 41.6.** During the period of this Agreement, all information obtained by the Vendor shall be made available to the Berks County Area Agency on Aging immediately upon demand.

42. Progress Reports

- 42.1.** 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.
- 42.2.** 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.

43. Rights In Data: Copyrights and Disclosure

- 43.1.** Definitions. 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.
- 43.2.** Rights in Data: Data submitted to and accepted by the Berks County Area Agency on Aging under this Agreement shall be the property of the Berks County Area Agency on 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.
- 43.3.** 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 Berks County Area Agency on Aging unless Vendor provides the Berks County Area Agency on Aging with written permission of the copyright owner for the Berks County Area Agency on Aging to use such copyrighted matter in a manner provided herein. Vendor shall exert all reasonable effort to advise the Berks County Area Agency on Aging, at the time of

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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 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 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 may participate in the defense of any such action. The Vendor shall pay all damages and costs awarded therein against the Commonwealth. If information and assistance are furnished by the Commonwealth 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 rights 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.

44. 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 the 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.

45. Nondiscrimination/Sexual Harassment Clause

45.1 During the term of the Agreement, Vendor agrees as follows:

- 45.1.1 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, a subcontractor, or any person acting on behalf of the Vendor shall not, by reason of gender, race, creed or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 45.1.2 The Vendor, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed or color.
- 45.1.3 The Vendor, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the

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policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- 45.1.4 The Vendor, contractor or any subcontractor shall not discriminate by reason of gender, race, creed or color against any contractor, subcontractor or supplier who is qualified to perform the work to which the agreement relates.
- 45.1.5 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.
- 45.1.6 The Vendor, any contractor or subcontractor 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.
- 45.1.7 The County may cancel or terminate the agreement and all money due or to become due under the 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.

46 **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.

47 **Property and Supplies**

- 47.1 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, in accordance with County code bid thresholds, by means of a system of competitive bidding as required under the provisions of the Pennsylvania 3rd Class County Code, Article XVIII and/or Federal Acquisitions Regulations, as applicable.
 - 47.1.1 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.
- 47.2 In addition, the Vendor shall maintain and administer with sound business practice a program for maintenance, repair, preservation, and insurance of property.

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- 47.3 Any vehicle purchased by the Vendor with Berks County Area Agency on 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.
- 47.4 Title to all property furnished by the Berks County Area Agency on Aging Agreements shall remain with the said Program. 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:
- 47.4.1 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 Berks County Area Agency on Aging) of these property items and will reimburse said Berks County Area Agency on Aging for the value of the remaining life of the property on the basis of such appraisals;
- 47.4.2 The Vendor may sell the property and reimburse said Berks County Area Agency on Aging for its appropriate share providing said Berks County Area Agency on Aging is notified ten (10) days in advance of the date of sale, and prior written approval is received from the Berks County Area Agency on Aging.
- 47.5 The Commonwealth property and any property purchased under this Agreement shall, unless otherwise provided herein or approved in writing by said Berks County Area Agency on Aging, 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.
- 48 **Right to Know Law**
- 48.1 The Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101-3104, applies to this Agreement.
- 48.2 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.
- 48.3 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:

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- 48.3.1 Provide the Vendor, 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
- 48.3.2 Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- 48.4 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.
- 48.5 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 Disclosing Party's written statement and the denial is appealed, Disclosing Party agrees to fully participate in any RTKL appellate proceedings.
- 48.6 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.
- 48.7 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.
- 48.8 The Vendor may file a legal challenge to a decision by the County to release a record the public with the Office of Open Records, or in the Pennsylvania Courts, 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.
- 48.9 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.

49 **Federal and State Audit Requirements**

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FORM OF AGREEMENT AND GENERAL CONDITIONS

- 49.1 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.
- 49.2 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”.
- 49.3 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.
- 49.4 If the Vendor expends total federal awards of less than 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.
- 49.5 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.
- 49.6 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.
- 49.7 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.

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- 49.8 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.
- 49.9 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.

50. Worker Protection and Investment

- 50.1. 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:

- 50.1.1. Construction Workplace Misclassification Act;
- 50.1.2. Employment of Minors Child Labor Act;
- 50.1.3. Minimum Wage Act;
- 50.1.4. Prevailing Wage Act;
- 50.1.5. Equal Pay Law;
- 50.1.6. Employer to Pay Employment Medical Examination Fee Act;
- 50.1.7. Seasonal Farm Labor Act;
- 50.1.8. Wage Payment and Collection Law;
- 50.1.9. Industrial Homework Law;
- 50.1.10. Construction Industry Employee Verification Act;
- 50.1.11. Act 102: Prohibition on Excessive Overtime in Healthcare;
- 50.1.12. Apprenticeship and Training Act; and,
- 50.1.13. Inspection of Employment Records Law

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

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51. Assurance of Compliance

- 51.1.** 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.
- 51.2.** The Vendor hereby agrees that it will comply with:
- 51.2.1.** 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.
 - 51.2.2.** 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 the 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.
 - 51.2.3.** 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 under any educational program or activity for which the Vendor received Federal financial assistance from the County.
 - 51.2.4.** 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.
- 52.** 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

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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.

53. 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.

54. 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 limited to, submission of information, attendance at meetings and appearance in court or before other judicial or quasijudicial bodies.

55. 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.

44 Headings

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

45 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.**

ATTACHMENT H
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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

name of other party

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): Mansoor Zaki

Name (printed): _____

Title: Buyer

Title: _____

---- END OF FORM OF AGREEMENT AND GENERAL CONDITIONS ----

ATTACHMENT I
PERFORMANCE BOND FOR INVITATION TO BID # 25-07-MZ

Not Applicable

ATTACHMENT J - HIPAA AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

AND NOW, effective this ____ day of _____, 2024 (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

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.

ATTACHMENT J - HIPAA AGREEMENT

Business Associate to another 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.

ATTACHMENT J - HIPAA AGREEMENT

(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 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

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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.

(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

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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.

(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.

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(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 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.

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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 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.

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(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 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.

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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): Mansoor Zaki

Title: _____

Title: Buyer

ATTACHMENT K

WORKER PROTECTION AND INVESTMENT CERTIFICATION

FORM BOP 2201



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>	

BOP-2201
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