

## **APPENDIX C: Sample Agreement**

### **ELDERLY SERVICES PROGRAM AGREEMENT**

between

**The Council on Aging of Southwestern Ohio  
and  
XXXXXXXXXX**

**Dates: XXXXX through XXXXX**

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<b>SECTION #</b>	<b>DESCRIPTION</b>	<b>BEGINNING PAGE</b>
Section 1	INTRODUCTION	3
Section 2	GENERAL REQUIREMENTS FOR PROVIDERS	3
Section 3	REIMBURSEMENT FOR SERVICES PROVIDED	4
Section 4	RECORDS AND DOCUMENTATION	4
Section 5	INDEMNIFICATIONS	5
Section 6	INSPECTION AND MONITORING	5
Section 7	APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, REGULATIONS, & ESTABLISHED GUIDELINES	6
Section 8	EQUAL EMPLOYMENT OPPORTUNITY	7
Section 9	DEBARMENT AND SUSPENSION	7
Section 10	COMPLIANCE REVIEW	8
Section 11	INSURANCE	8
Section 12	AMENDMENTS	10
Section 13	TERMINATION	10
Section 14	ASSIGNABILITY	11
Section 15	MISCELLANEOUS	12
Section 16	EMERGENCY PREPAREDNESS	16
Section 17	NOTICE REQUIREMENTS	17

Section 18	PRIORITY	18
Section 19	TERMS OF THE AGREEMENT	18
Section 20	SIGNATURES	19
EXHIBITS	A: RFP AND ANY ADDENDA B: PROVIDERS PROPOSAL C: RATE SCHEDULE D: BUSINESS ASSOCIATES AGREEMENT (HIPAA)	

SAMPLE

## **SECTION 1 INTRODUCTION**

THIS AGREEMENT ("Agreement") is entered into effective XXXXX by and between XXXXX, Inc., hereinafter referred to as the "Provider," and Council on Aging of Southwestern Ohio, hereinafter referred to as "COA<sup>SM</sup>." The purpose of this Agreement is to define the terms and conditions under which Provider is to provide Home Care Assistance for the Elderly Services Program.

## **SECTION 2 GENERAL REQUIREMENTS FOR PROVIDERS**

- A. Provider shall provide only the services for which it is certified and as delineated on Exhibit C: Rate Schedule, attached to this Agreement and made a part hereof.
- B. Provider shall provide the services listed in the service zones specified and at the reimbursement rate indicated on Exhibit C of this Agreement. Provider shall not, without prior written approval from COA, discontinue servicing any service or zone listed on Exhibit C of this Agreement.
- C. Provider shall meet the current Elderly Services Program Conditions of Participation and the current Service Specifications, incorporated herein by reference.
- D. Provider represents that it is, and shall remain during the term hereof, a lawful business organization (for profit or not-for-profit) registered to do business in Ohio and in good standing under the laws of the State of Ohio.
- E. Provider acknowledges that communication with COA under this Agreement is necessary dependent on technology and computers. Therefore, the Provider agrees to cooperate fully with COA to implement any technology changes within a reasonable time, as determined by COA, after notified of change is required. Provider shall promptly, upon receipt of invoice from COA, make payment for any connectivity or service fees, or other fees related to the requirements, specifications or recommendations relating to technology necessary for Provider to perform under this Agreement, as referenced in the COMPUTER HARDWARE AND SOFTWARE REQUIREMENTS, incorporated herein by reference.
- F. Upon declaration of a disaster by the President, Governor, County Board of Commissioners ("County"), and/or COA, the Provider will cooperate with COA to assess the extent of the impact upon persons aged 60 and over and to coordinate the public and private resources in the field of aging in order to assist older disaster victims.

## **SECTION 3 REIMBURSEMENT FOR SERVICES PROVIDED**

- A. Provider will be paid at the rate specified in Exhibit C upon providing and invoicing the authorized units of service in accordance with the RFP. Provider must use the COA ESP software, and approved format, to invoice COA for services authorized and provided. Provider must invoice monthly within the time frames established by COA.
- B. Provider will be reimbursed monthly via Electronic Funds Transfer (EFT), contingent upon the conditions of this Agreement being met. COA will issue reimbursement payment directly to the Provider. In the event Provider is paid for services not allowable under the terms of the Agreement, the amount of overpayment will be deducted from future reimbursements to Provider. If the amount of future reimbursement is insufficient to cover this obligation, or if final payment to Provider under this Agreement already has been made, then Provider shall refund the outstanding amount to COA within ten (10) business days after written receipt of notice to do so.
- C. COA shall have the right to refuse to process Provider claims when claims are not received within seventy five (75) days after the end of the month in which Provider delivered the services. Extenuating circumstances that will cause a delay in billing should be promptly discussed with COA's Controller.
- D. COA will accept full responsibility and liability to collect and verify clients' financial liability as required by the Counties current elderly services program general information and program guidelines, incorporated herein by reference.

## **SECTION 4 RECORDS AND DOCUMENTATION**

Provider shall ensure that all necessary records are maintained to fully disclose the extent of services provided under this Agreement until the later of: a period of five (5) years from the expiration date of this Agreement or, if an audit is initiated within the five (5) year period, until the audit is completed and every exception resolved, or five (5) years after adjudication, and to provide immediate access to these records upon request of COA or its designee for audit purposes.

Further, Provider agrees to comply with all applicable Federal and State confidentiality laws, including without limitation, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and all implementing regulations there under, and all other regulations applicable to the program(s) under which this Agreement is funded, the Ohio Revised Code, and the regulations and administrative procedures of COA and County.

## **SECTION 5 INDEMNIFICATIONS**

At all times during the term of the Agreement and to the extent permitted by law, Provider hereby agrees to indemnify COA and County, together with their respective trustees, commissioners, members, directors, officers, employees, assigns, and agents, and to hold

COA and County harmless from and defend COA and County against any and all claims, demands, losses, liabilities, costs and expenses (including but not limited to reasonable attorneys' fees and court costs) arising in connection with or resulting from any breach or violation of this Agreement by Provider or negligent acts or omissions of Provider or anyone acting on Provider's behalf. This indemnification is not to be construed as a waiver of any and all defenses that Provider has against COA and County. Nothing herein shall limit the right of COA or County to participate in its own defense.

## **SECTION 6 INSPECTION AND MONITORING**

- A. Provider shall maintain and, upon request, make available to COA, the County Board of Commissioners, or any of their duly authorized representatives independent books, records, payroll, accounting procedures and practices, and documents which sufficiently and properly document and reflect all direct and indirect costs of any nature expended in operating the ESP. Such records shall be subject at all reasonable times to inspection, review, and audit by COA, the County, or their designees, or any government agency having responsibility or control over expenditure of public funds for the purposes of making audit, examination, excerpts, and transcriptions, determining compliance with all applicable laws and regulations of any kind, and the terms and conditions of this Agreement.
- B. Provider will be monitored periodically by a representative(s) from COA, or a duly authorized representative, and Provider will permit access for such monitoring at all reasonable times. The monitoring will be to determine whether Provider's activities are being carried out as specified by the Agreement. Monitoring activities may include, but are not limited to, on-site observation, inspection, interviews of staff and clients, and review of Provider employee and fiscal records related to the services provided under this Agreement and any other procedures, plans, documents and records which are directly pertinent to this Agreement. Specific monitoring methods and information to be requested may be discussed with Provider, although COA reserves the right to make final determination of the methods to be used and the information, pursuant to this Agreement, to be collected. Adequate measures will be taken by COA to insure that records of a confidential nature will not be compromised. If, in the judgment of COA, Provider is found to be in violation of this section or unable to carry out its provisions, COA, at its option, may suspend or terminate this Agreement,
- C. Provider agrees to accept responsibility for receiving, responding to, and/or complying with any audit exceptions noted in the course of any audit in connection with this Agreement. Such responsibility shall include, but not be limited to, the following actions with respect to any such exception:
  - 1. Provider shall repay COA the full amount of any funds received for services not covered by this Agreement.
  - 2. Provider shall repay to COA the full amount of any funds received as a result of any duplicate or erroneous billings, deceptive claims for reimbursement, or falsification of information provided to COA.

For purposes of this paragraph, Section 6 C 2, “deceptive” means knowingly deceiving another, or causing another to be deceived, by fake or misleading representation, by withholding information, by preventing another from acquiring information, or by any other act, conduct, or omission which creates, confirms or perpetuates a fake impression in another, including a fake impression as to law, value, state of mind, or other objective or subjective fact.

## **SECTION 7 APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, REGULATIONS AND ESTABLISHED GUIDELINES**

- A. Provider shall conform to the requirements of all applicable federal, state and local laws, regulations, and established guidelines of the County and ESP and those incorporated by reference herein, including, but not limited to the following, as all may be amended from time to time:
1. Scope of service provided by the State of Ohio
  2. Civil Rights Act of 1964, as Amended;
  3. Section 504 of the Rehabilitation Act of 1973, as Amended;
  4. Older Americans Act of 1965, as Amended;
  5. Federal Fair Labor Standards Act of 1938 (FLSA), as Amended, including but not limited to the provisions of FLSA relating to payment for travel time; payment for all hours worked and payment of the minimum wage and overtime;
  6. Age Discrimination Act of 1975, as Amended;
  7. Age Discrimination in Employment Act of 1967, as Amended;
  8. Americans with Disabilities Act of 1990;
  9. State and local health, fire, safety, zoning, and sanitation codes;
  10. Drug-Free Workplace Act of 1988;
  11. Federal, State, and local regulations regarding taxes, unemployment, and workers compensation;
  12. Health Insurance Portability and Accountability Act (“HIPAA”)
  13. Family Medical Leave Act (“FMLA”); and
  14. Uniformed Services Employment and Reemployment Rights Act (“USERRA”)
- B. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Provider shall comply with all applicable federal and state non-discrimination laws. Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants shall receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, age, disability or military status.
- C. Provider at its sole cost shall conduct a criminal background check as required within the Conditions of Participation and Service Specifications.
- D. Provider shall incorporate the foregoing requirements in all Subcontracts

for work hereunder. Subcontracts shall not be made without the prior knowledge of COA.

## **SECTION 8 EQUAL EMPLOYMENT OPPORTUNITY**

- A. In carrying out this Agreement, Provider shall comply with all laws state and federal prohibiting discrimination in employment. This includes discrimination based on race, religion, national origin, color, sex, sexual orientation, age disability or Veteran status.
- B. Provider shall incorporate these requirements in all subcontracts for work completed under this Agreement.
- C. Provider shall, upon request, furnish COA with its policy prohibiting discrimination and affirmative action plan, if applicable.

## **SECTION 9 DEBARMENT AND SUSPENSION**

Provider certifies that neither it nor its principals are at any time during this Agreement debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any state or federal department or agency. The term 'principal' for purposes of this Agreement is defined as an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, including a consultant or other person who occupies a technical or professional position capable of substantially influencing the control or operations of the Provider's business. Provider shall notify COA immediately in the event it becomes aware of any such actual or proposed debarment, suspension, ineligibility, or voluntary exclusion. Failure to provide such notice shall constitute material breach of this Agreement.

## **SECTION 10 COMPLIANCE REVIEW**

- A. Provider will maintain documentation, as appropriate, to support each action under this Agreement and will file it in a manner allowing it to be readily located.
- B. COA's Contract Compliance Specialist will perform a compliance and financial review. This review shall include a comprehensive review of all applicable documentation. Provider shall cooperate fully to accomplish said unit review. The timing of the review performed shall be at the discretion of COA.
- C. Provider agrees to accept responsibility for receiving, replying to, and/or complying with any unit review exceptions directly related to the provisions of this Agreement. Provider agrees to accept the conclusions of and to be bound by the results of the review and to pay to COA, upon demand, within ten (10) business days after receipt of written notice to do so, the full amount as may be determined in any review exceptions.

## SECTION 11 INSURANCE

- A. Provider, at Provider's sole cost and expense, agrees to carry and maintain in full force, with no interruption of coverage during the entire term of this Agreement:
1. Comprehensive general liability minimum of \$1,000,000. Provider shall furnish COA with a Certificate of Insurance evidencing Provider's liability insurance meets the proper requirements. The insurance certificate shall name "Council on Aging of Southwestern Ohio (COASM)" as an additional insured and shall include a provision that requires written notice to COA at least thirty (30) calendar days in advance of any change, cancellation or non-renewal of coverage. Provider understands it is responsible for ensuring a current Certificate of Insurance is received by COA's Procurement and Provider Services Department whenever a change is made to the Provider's insurance coverage including, but not limited to, change in insurance carrier(s), change in coverage, renewal of coverage.
  2. Third Party Fidelity or similar insurance covering client loss due to theft of client's property or money by any employee or volunteer of Provider. Provider shall furnish COA with a Certificate of Insurance evidencing Provider has the appropriate insurance to cover client loss due to theft or property damage. Provider understands it is responsible for ensuring a current Certificate of Insurance is received by COA's Procurement and Provider Services Department whenever a change is made to the Provider's Third Party Fidelity insurance coverage, including, but not limited to, change in insurance carrier(s), change in coverage, renewal of coverage.
  3. Automobile liability with coverage against claims for injury and/or death in the amount of \$300,000 per individual, \$500,000 per occurrence if providing transportation services.
  4. A fidelity bond covering all individuals authorized by Provider to collect and/or disburse funds.
  5. Provider of health care services, social work/counseling, and nutritional consultation shall carry and maintain professional liability insurance insuring Provider and such professionals against any and all claims, actions, causes, costs and expenses relating to or arising out of the performance of services under this Agreement, on an occurrence basis, or claims made with appropriate tail coverage. The minimum amount of coverage shall be \$2,000,000 for each incident and \$2,000,000 annual aggregate.
  6. Workers' Compensation Insurance. The Contractor is performing as an

independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

- B. Provider further agrees that in the event its comprehensive general or professional liability policy is maintained on a "claims made" basis, and in the event that this Agreement is terminated, Provider shall continue such policy in effect for the period of any statute or statutes of limitation application to claims thereby insured, notwithstanding the termination of this Agreement.
- C. Provider shall have all the above described insurance in full force and effect prior to the commencement of work under this Agreement. The insurance must be through a carrier licensed to provide insurance in Ohio and reasonably acceptable to COA. Provider agrees to deliver memorandum copies of such policies to COA upon request. Provider agrees to make best efforts to provide COA at least thirty (30) days advance notice, and in any event will provide notice as soon as reasonably practicable, of any cancellation or material modification of said policies. Cancellation or non-renewal of required insurance, or not furnishing COA with evidence of required insurance coverage, shall be grounds to terminate this Agreement.
- D. The insurance required under this Agreement shall cover the acts or omissions of both paid employees and volunteers working for Provider.
- E. Provider shall require the same amount of insurance from all subcontractors utilized under this Agreement.

## **SECTION 12 AMENDMENTS**

This Agreement may not be amended except through a written instrument signed by both parties. It is agreed, however, that any amendments to laws, rules, or regulations cited herein, or The Scope of Services, Provided by the State of Ohio, will result in the correlative modification of this Agreement, without the necessity for executing a written amendment.

*During the term of this Agreement COA may adopt provider quality measures ("PQMs") designed to ensure that providers are meeting expected quality performance standards. Any PQMs so adopted shall be generally applicable to providers providing services through contracts with COA. COA reserves the right to unilaterally modify the Agreement, upon written notice to the Provider, to implement any provider quality*

*program adopted by COA after the date of this Agreement. Provider's performance, as measured by PQMs, may be used by COA in determining Provider's eligibility to participate in COA's "request for services" system, and the failure of Provider to meet minimum PQMs may be used by COA as grounds for imposing sanctions on Provider.*

## **SECTION 13 TERMINATION**

- A. Notwithstanding anything herein to the contrary, either party may at any time during the term of the Agreement or any extension thereof, with or without cause and without having to show a breach, terminate this Agreement by giving ninety (90) days' notice in writing to the other party of its intention to do so. Provider must notify COA of its intent to terminate this Agreement prior to notifying clients (being serviced by Provider for COA. under this Agreement) of such termination. Provider will assist care managers with transition of clients to another contracted COA Provider as necessary. In addition, the Agreement may be terminated at any time (without 90 days written notice) by COA for good and just cause as determined within the sole and absolute discretion of COA, including but not limited Provider's neglect, misconduct, fraud, misappropriation, embezzlement, violation of any of the provisions of this Agreement, or to funding decline. In the event funds to finance this Agreement, or part of this Agreement, become unavailable, the parties will make best efforts to provide twenty (20) days written notice to the other party prior to termination. COA shall be final authority as to the availability of funds. All such notices shall be in writing and shall be delivered according to the "Notice Requirements" provided in Section 16 of this Agreement.
- B. If, in the opinion of COA, the Provider has materially breached any of the terms of this Agreement, COA shall deliver to Provider a written notice detailing the nature of the breach. If Provider has not cured or made arrangements satisfactory to COA to cure the breach within ten (10) working days of receipt of the written notice thereof, COA, at its sole discretion, may suspend or terminate this Agreement immediately upon written notice of such suspension or termination. COA, or the agency under contract to administer Care Management for COA, reserves the right to disenroll clients from service by Provider at any time within its sole discretion which shall not be deemed a breach of this Agreement by COA.

## **SECTION 14 ASSIGNABILITY**

- A. Except as expressly provided herein, neither COA nor Provider has the right or power to assign, subcontract, or transfer its rights and duties under this Agreement without the prior written consent of the other. COA and Provider each bind themselves, their successors, and assignees to this Agreement.
- B. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, trustee, member, employee, or agent of either COA or Provider.

- C. If Provider is purchasing or being purchased by, or merging with, another entity (even if the purchasing/merging entity is a Provider with an existing Service Provider Agreement with COA), Provider shall provide written notice to COA at least ninety days (90) prior to the effective merger or purchase date. COA reserves the right to not approve of the Purchase or Merger if not in the best interest of COA or its clients and to cancel its contract with the Provider. Provider must notify COA prior to notifying clients (being serviced by Provider, for COA under this Agreement) of such purchase or merger. Provider will assist care managers with transition of clients to another contracted COA Provider as necessary. Provider acknowledges that a purchase of, or merger with, another entity may affect the terms of this Agreement.
- D. In the event that Provider subcontracts any of its obligations hereunder, Provider shall not be released from said obligations and Purchaser shall remain directly liable to COA for compliance with all of the terms of this Agreement and full performance of all of Provider's obligations hereunder, as and when the same are due.

## **SECTION 15 MISCELLANEOUS**

- A. **APPEALS:**

Provider shall have the right of appeal on actions taken by COA pertaining to this Agreement per COA policies.
- B. **CONFLICT OF INTEREST:**

Provider agrees that it will not enter into any agreements or arrangements that would be in direct conflict with the spirit of this contract or any of the attached Exhibits
- C. **RELATIONSHIP OF THE PARTIES:**

It is mutually understood and agreed that Provider is and shall at all times be considered to be engaged by COA to perform services pursuant to this Agreement as an independent contractor. Provider is not an agent or employee of COA by virtue of this Agreement. COA shall neither have nor exercise any control or direction over the methods by which Provider shall perform Provider's work and functions under this Agreement, provided that all services shall at all times be performed in a manner consistent with all relevant professional standards and the provisions of this Agreement.

This Agreement may be renewed or extended upon the mutual written agreement of Provider and COA.
- D. **MEDIA, PUBLIC RELATIONS, AND OUTREACH:**

Provider shall collaborate with COA to help ensure that media relations, public information, and outreach related to this agreement or the services provided under this agreement are mutually beneficial to the Provider and to COA including any use of social media.

Any outreach campaigns, including media relations, shall be coordinated with the COA Communications Director prior to planning such campaigns, Program information, whether in print or electronic format, shall include at a

minimum, the COA Agency Partner logo and a statement that the program is administered by Council on Aging of Southwestern Ohio. Formats for such information include, but are not limited to brochures, annual reports, news releases, media interviews, and web site content. The COA Agency Partner logo can be downloaded from the COA website, [www.help4seniors.org](http://www.help4seniors.org), under Service Provider Information. Or, upon request to the Communications Director, COA will furnish Provider with logo in electronic format.

If provider has a web site that includes content about the Services provided by this agreement, Provider shall establish and maintain a link from the COA section to the COA website, [www.help4seniors.org](http://www.help4seniors.org).

Although information about and generated under this Agreement may fall within the public domain, Provider will not release information about or related to this Agreement to the general public or media verbally, in writing, or by any electronic means without prior approval from the COA Communications Director, unless Provider is required to release requested information by law.

Except where COA approval has been granted in advance, the Provider will not seek to publicize and will not respond to unsolicited media queries requesting: announcement of Agreement award, Agreement terms and conditions, Agreement scope of work, government-furnished documents COA may provide to Provider to fulfill the Agreement scope of work, deliverables required under the Agreement, results obtained under the Agreement, and impact of Agreement activities. If contacted by the media about this Agreement, Provider agrees to notify the COA Communications Director in lieu of responding immediately to media queries. If it is not feasible for the Provider to contact the Communications Director first, the Provider may discuss with the media general service provision only as related to the Agreement.

Nothing in this section is meant to restrict Provider from using Agreement information and results to market to specific clients or prospects.

Provider shall not make any monetary, material or "in kind" contribution of any nature to COA or any COA staff member, manager, trustee, officer or agent. COA reserves the right to announce to the general public and media: award of the Agreement, Agreement terms and conditions, scope of work under the Agreement, deliverables and results obtained under the Agreement, impact of Agreement activities, and assessment of Providers' performance under the Agreement.

Provider will ensure that no information about, or obtained from, an individual and in its possession will be disclosed in a form identifiable with an individual without the informed consent of the individual. Lists of older persons compiled pursuant to the provision of Information and Referral will be used solely for the purpose of providing social services, only with the

informed consent of each individual on such list.

E. **WAIVER OF BREACH:**

Any waiver of any breach of this Agreement shall not be construed to be a continuing waiver or consent to any subsequent breach on the part of either party to this Agreement.

F. **SEVERABILITY:**

If any provision of the Agreement is held to be unenforceable for any reason, the remainder of this Agreement shall, nevertheless, remain in full force and effect.

G. **GOVERNING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to its rules as to conflicts of laws.

H. **RESTRICTION ON USE OF LEVY FUNDS:**

Provider agrees that funds will not be used by the Provider to engage in any claim or litigation against the COA, the State of Ohio or any department or division of the government. In addition, funds may not be used for any political campaign purpose.

I. **DISPUTE RESOLUTION:**

The parties of this agreement acknowledge that despite best intentions, complaints and disputes can occur. To aide in the resolution of a complaint or dispute a Non-Disparagement Clause has been added to this Agreement. For the purposes of this section "disparage" shall mean any negative statement, whether written or oral about the other party. COA desires to resolve all complaints and disputes to the mutual satisfaction of all parties and has procedures in place for complaints and disputes to be addressed and resolved. As a part of this Agreement Provider affirms that neither it nor any of its officers, employees, or board members will publicly criticize, disparage or defame COA, or its products, services, policies, officers, employees or board members, with any written or oral statement or image, including, but not limited to, any statements made via websites, blogs, and postings to the internet, or email. This non-disparagement clause does not limit the Provider or any of its officers, employees or board members, the right to make statements to any government or law enforcement agency regarding criminal wrong doing. Also as a part of this Agreement COA affirms that neither it nor any of its officers, employees, or board members will publicly criticize, disparage or defame Provider, or its products, services, policies, officers, employees or board members, with any written or oral statement or image including, but not limited to, any statements made via websites, blogs, postings to the internet, or email. This non-disparagement clause does not limit COA or any of its officers, employees or board members the right to make statements to any government or law enforcement agency regarding criminal wrong doing.

Provider agrees that any disputes between Provider and COA which are

unable to be resolved between the parties shall be resolved in accordance with the applicable requirements, if any, under the agreement between COA and the County with respect to the delivery of services reimbursable with Levy funds.

J. CONTINUITY OF OPERATIONS:

Provider should have a plan in place to ensure continuity of operations in the event of an emergency and other contingencies, including but not limited to weather related situations. The provider will notify COA immediately if the Provider is unable to provide services for which they are contracted and/or provide emergency response support as requested. This includes, but is not limited to, closing for the day for weather related reasons. Providers will report information to COA immediately if they believe a situation is developing that may severely impact their operational capacity or place clients at risk and/or upon request of COA or emergency management officials. The provider will notify COA immediately if the Provider has information about changes to client needs during an emergency.

K. INCIDENTS AND ALERTS:

Provider shall notify COA of any and all major unusual incidents that impact the Provider and/or any client served pursuant to this Agreement. The notification shall be phoned or e-mailed to COA's Manager of Contracts and Procurement and the Manager of Medicaid Waiver Programs immediately, within one hour, after the Provider becomes aware of the incident or the alert. Provider agrees to furnish upon request of COA any reports relating to such incidents and alerts and to cooperate with COA and/or its authorized representatives in any investigation of any major unusual incident.

L. PROVIDER NETWORK:

COA reserves the right, at its sole discretion, to expand and or refresh the Provider Network in any or all categories of service, to include the addition of categories or subcategories, or to meet geographic needs, by the issuance of additional RFP(s) or by other means, if it is deemed to be in the Client's best interest. COA intends to review and assess this need at least annually.

M. INTELLECTUAL PROPERTY; CONFIDENTIAL, PROPRIETARY AND TRADE SECRET INFORMATION:

COA shall have sole and exclusive rights to and interests in any rights, ownership, interests and all intellectual property, including but not limited to copyrights, patents, technology secrets, commercial secrets and others, arising from the performance by the Provider of its obligations under this Agreement, whether developed by either Party. The parties agree that this article survives the modification, termination or expiration of this Agreement. Any and all intellectual property of COA and any and all confidential, proprietary and trade secrets of COA remains the property (hereinafter "IP") of COA at all times during this Agreement and thereafter. Such IP includes but is not limited to pricing information, strategic information and/or service delivery methodology or systems. COA does not transfer IP to the Provider or third-parties, or authorize the Provider to disclose IP to third-parties, without

the express written consent of COA. COA preserves all legal remedies to protect its IP; and Provider agrees to Indemnify COA against losses or damages to COA as a result of any unauthorized use or disclosure of COA's IP.

N. **CONFIDENTIALITY:**

Confidential, proprietary, and trade secrets may be shared only with and among those contracted or subcontracted to provide services under this agreement and only for the purpose of fulfilling the requirements of this contract. Provider agrees to maintain confidentiality to the extent permissible by law.

## **SECTION 16 EMERGENCY PREPAREDNESS**

### **Policy Statement:**

Policy Statement: In an emergency, it is Council on Aging of Southwestern Ohio's (COA) responsibility to do what is necessary to sustain critical services to our clients. An "emergency" is defined as an event or series of events that place the operational capacity of COA at risk and/or significantly disrupts client services or places clients at risk. When such events occur, COA will coordinate efforts of the whole provider network in developing a response strategy and will also serve as the primary liaison to the local emergency management officials on behalf of the agency network. Providers are therefore expected to cooperate with these efforts and make their resources available to respond in a crisis. COA's Continuity of Operations Plan (COOP) for responding to emergencies is activated at the discretion of the CEO and/or the Senior Leadership Team and may be activated if any of the following circumstances apply:

- Operational capacity has been or is likely to be impacted for more than 72 hours
- If client services have been or are likely to be disrupted for more than 24 hours.
- If clients are or are likely to be at risk.
- If the magnitude of the event requires significant mobilization of resources.
- A weather alert or warning is issued by the National Weather Service and COA deems it necessary to prepare for weather which will significantly impact client services and business operations.

As emergencies do not always present themselves immediately and may develop over time, COA and the Provider must be able to recognize potential emergencies that place our operations or clients at risk. Clients may be at risk even if operations are not impacted, for example, a power outage during a heat wave.

### **Provider Requirements in an Emergency**

The Provider agrees to the following:

1. The Provider will have a continuity of operations plan. At a minimum, that plan will include a plan for back-up operations should the provider's main business location become unavailable.

2. In the event of an emergency, COA will activate their Continuity of Operations Plan and notify providers that the COOP is activated and provide a single point of contact for the providers. Unless otherwise specified, COA's Procurement and Provider Relations Manager will serve as the primary point of contact and the Director of Business Operations will serve as the backup. Notification may be made by email, telephone, or website.

3. COA will take the lead in coordinating the response, unless COA's operations are significantly impacted by the emergency. The Provider will work with COA to coordinate the response. The Providers agree to follow the instructions provided by COA and local EMA officials. The Provider will deploy available resources to aid in the response effort even if the activity is outside the normal course of operations. This may include:

a. Not closing operations, and standing ready to step up operations and services;  
b. Providing services beyond the provider's traditional territory;  
c. Deploying the provider's resources in different ways to include the provider's facility(s), equipment, staff, and resources (e.g., using the senior center as emergency shelter/housing).

4. The provider will notify COA immediately if the Provider is unable to provide services for which they are contracted and/or provide emergency response support as requested.

5. Providers will report information to COA immediately if they believe a situation is developing that may severely impact their operational capacity or place clients at risk and/or upon request of COA or emergency management officials.

6. The provider will notify COA immediately if the Provider has information about changes to client needs during an emergency.

7. COA will work with providers to seek funding, as available from other sources which become available when a state of emergency is declared, in the event the providers incur unfunded expenses in the effort to maintain client safety, sustain critical services, and/or meet critical needs not covered, but required due to the crisis. Providers will therefore track their expenses during crisis situations where COA has activated the COOP.

8. The Provider will participate in readiness activities such as planning for emergencies, table top and other exercises, and providing contact and other organizational information.

## **SECTION 17 NOTICE REQUIREMENTS**

Whenever, under this Agreement, notice is required to be given, it shall be in writing and shall be hand-delivered or sent via the United States Certified Mail or an overnight express carrier, postage prepaid, return receipt requested, to the party to receive the notice at:

If to COA to:           Suzanne Burke, Chief Executive Officer  
                                  Council on Aging of Southwestern Ohio  
                                  175 Tri County Parkway  
                                  Cincinnati, Ohio 45246

If to Provider to:

## **SECTION 18 PRIORITY OF DOCUMENTS**

The Agreement, the RFP, all attachments, the Conditions of Participation, the Service Specifications and other documents referenced therein shall be read so as to complement each other. However, in the event of a conflict requiring interpretation of the documents the order of precedence shall be as follows:

1. The contract document
2. Exhibit A the RFP and all attachments and addenda
3. Exhibit B the Providers proposal and any clarifications

## **SECTION 19 TERM OF THE AGREEMENT**

The Agreement by and between Provider and COA effective on XXXXX shall remain in effect, unless amended or terminated by one or more of the parties, through XXXXX.

This Agreement together with the Exhibits constitutes the entire understanding between the parties with respect to the subject matter hereof, superseding all prior Agreements and understandings, whether written or oral.

All provisions in this Agreement that by their terms must necessarily be performed after termination or expiration of this Agreement (e.g., records retention, auditing requirements, etc.) shall survive such termination or expiration.

**SECTION 20 SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have affixed their signatures.

**PROVIDER:**

By:

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

**COA: Council on Aging of Southwestern Ohio**

By:

\_\_\_\_\_ Date: \_\_\_\_\_  
Suzanne Burke, Chief Executive Officer

SAMPLE