

Appendix C: Sample Title III Agreement

SERVICE AGREEMENT

between

COUNCIL ON AGING OF SOUTHWESTERN OHIO

and

<<PROVIDER NAME>>

Funded by THE OLDER AMERICANS ACT OF 1965, AS AMENDED, Part A through E, including the Nutrition Services Incentive Program (“NSIP”) and Senior Community Services State Subsidy

DATE through DATE

Section I:	SERVICES AND REVENUE	Page 3
Section II:	EARNING AND DISBURSING OF FUNDS	Page 4
Section III:	RECORDS AND DOCUMENTATION, CONTROL POLICIES, AND MONITORING	Page 6
Section IV:	HIPAA	Page 8
Section V:	INDEMNIFICATION	Page 8
Section VI:	APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, REGULATIONS, AND ESTABLISHED POLICIES AND PROCEDURES	Page 8
Section VII:	EQUAL EMPLOYMENT OPPORTUNITY	Page 9
Section VIII:	DEBARMENT AND SUSPENSION	Page 10
Section IX:	INSURANCE	Page 10
Section X:	AMENDMENT/MODIFICATION	Page 11
Section XI:	TERMINATION	Page 11
Section XII:	ASSIGNABILITY	Page 12
Section XIII:	NOTICE REQUIREMENTS	Page 12
Section XIV:	MISCELLANEOUS (APPEALS; CONFLICT OF INTEREST; RELATIONSHIP OF THE PARTIES; MEDIA PUBLIC RELATIONS AND OUTREACH; MAJOR UNUSUAL INCIDENT; SPECIAL CONDITIONS; BREACH / WAIVER OF BREACH; SEVERABILITY; PRIORITY OF DOCUMENTS; GOVERNING LAW)	Page 13
Section XV:	TERM OF THE AGREEMENT	Page 18
	ATTACHMENT A –TITLE III HARDWARE & SOFTWARE SYSTEM REQUIREMENTS	Page 19
	ATTACHMENT B – FOCAL POINTS	Page 21
	ATTACHMENT C - SCHEDULE	

ATTACHMENT D - BUSINESS ASSOCIATE AGREEMENT (BAA)

ATTACHMENT E – EMERGENCY PREPAREDNESS PLAN

THIS AGREEMENT (“Agreement”) is entered into by and between Council on Aging of Southwestern Ohio, hereinafter “COA,” and <<PROVIDER>>, hereinafter “Provider,” is effective <<DATE>>.

WHEREAS, COA is authorized by the Ohio Department of Aging (“ODA”) to receive and disburse funding from Title III of the Older Americans Act of 1965, as amended (“OAA”), Nutrition Services Incentive Program (“NSIP”), and Senior Community Services State Subsidy, and other funds, and to monitor the expenditure of such funds to assist in the provision of nutrition/social services to persons aged 60 and older, and/or their caregivers (Title III-E) and in order to promote independent living, and thereby reduce unnecessary institutionalization; and

WHEREAS, Provider submitted a proposal in response to a Request for Proposal to Provide Services funded by Title III of the Older Americans Act, Nutrition Services Incentive Program, and Senior Community Services State Subsidy (“RFP”) released by COA on March 18, 2019; and

WHEREAS, COA accepted Provider’s Proposal and desires to enter into an Agreement with the Provider to define the terms and conditions under which Provider is to furnish and bill for services provided.

NOW THEREFORE, in consideration of the foregoing and other mutual promises herein contained, the parties hereto agree as follows:

Provider shall serve the geographic area detailed in Provider’s accepted Proposal, incorporated herein by reference;

Provider shall satisfy the service needs of older persons (individuals who are 60 years of age or older) with the greatest economic and social needs with particular attention to older persons who are low-income, who are low income minorities, who have limited proficiency in the English language, who reside in rural areas, and those who are at risk for institutional placement.

Provider shall provide only those services marked below and shall provide the services in compliance with the specifically identified in rule 173-3-06 and rules 173-4-05 thru 173-4-09 of the Ohio Administrative Code (“OAC”) or the COA Service Specification, whichever is applicable to the specific service:

- Respite - Adult Day Service Rule (see service specification)
- Alzheimer’s Education (see service specification)
- Caregiver Services FCSP – Support Group (see service specification)
- Caregiver Services FCSP – Counseling (see service specification)
- Congregate Nutrition Service (see service specification)
- Home Delivered Meals Rule (see service specification)
- Legal Assistance (see service specification)
- Ombudsman (see service specification)
- Respite - Personal Care (see service specification)

- Recreation (see service specification)
- Supportive Services (see service specification)
- Transportation Rule (see service specification)

Provider shall meet all COA specific objectives for giving service priority to specific consumer groups.

Provider shall request reimbursement for services provided within the time frames established by COA and in a format prescribed by COA.

Provider shall have, and maintain during the entire term of this Agreement, a computer with high speed Internet access (minimum DSL and/or cable modem), and a printer either connected directly to the computer used for accessing the Internet, or available as part of a local area network; and shall ensure it can connect to the Internet and access Wellsky Aging & Disability System (Wellsky) formerly known as SAM, the web-based application used for reporting.

SECTION I - SERVICES AND REVENUE

- A. Under this Agreement, Provider shall provide the services identified on the Service and Funding Schedule ("Schedule") of this Agreement, in the service unit specified, and at the reimbursement unit rate indicated on the Schedule for a total dollar amount not to exceed the amounts listed under "Title III," "Senior and Community," "NSIP," and Total Funding. (The Schedule is attached hereto this Agreement, and made a part hereof.)
- B. Provider shall furnish the required "Minimum Match" (as stated on the Schedule), derived from non-federal sources, of total program costs as specified for each service category.
- C. Funding is contingent upon COA's receipt of the projected Title III/NSIP and/or State funds from ODA and subject to the terms and conditions stated herein. COA has the right to disburse and/or retain funds as it determines best benefits the program, subject to the terms and conditions under which the funds were allocated and the terms and conditions stated herein.
- D. Although the Agreement is for 36 months, through September 30, 2022, the funding as indicated on the Schedule is only awarded for the Title III 2020 program year, October 1, 2019 through September 30, 2020. Funding will be awarded for program years 2021 (October 1, 2020 through September 30, 2021) and 2022 (October 1, 2021 through September 30, 2022), at COA's sole discretion based on, but not limited to: provider performance, available funding, program requirements and priorities, consumer needs, and COA's Mission and Vision.
- E. COA at its sole discretion may adjust Schedules, which includes rates and units, based on Provider performance or lack thereof, unforeseen situations, change in funding, change in law, or to best meet the needs of consumers or the program. Additionally, COA, at its sole discretion, at times during the term of this Agreement may offer Provider an opportunity to request unit revisions to the Schedules. Such revisions shall be requested in writing in a format provided by COA and must be

submitted with written justification for the requested revision. No such revisions shall be considered in effect until COA has received the signed revised schedule from Provider.

- F. All sources of revenue shall be expended for the benefit of services stated on the Schedule.
- G. Provider will not be reimbursed for any service unless a valid Agreement is in place at the time the service is provided. The Agreement is not valid until it has been signed by authorized representatives from both COA and Provider.

SECTION II - EARNING AND DISBURSING OF FUNDS

- A. Title III, NSIP, and/or State funds are earned under the following conditions:
 - 1. Upon providing units of service to persons age 60 and over, and/or caregivers (if expending Title III E funds) in compliance with the rules as stated in the OAC.
 - 2. Upon submission of the required data in SAM and/or other reports as required by COA, documenting the delivery of such service.
 - 3. Upon furnishing the "Required Minimum Match" of total program costs from non-federal sources for each service category.
- B. Provider will be reimbursed monthly by COA, contingent upon the conditions of this Agreement being met and Provider timely invoicing for services delivered according to a "Billing and Payment Schedule" available in the Service Providers section on COA's website, www.help4seniors.org. COA will issue payment directly to the Provider via Electronic Funds Transfer (EFT). COA will not issue payment to any third-party, even if directed to do so by the Provider.
- C. Compensation will be based on the unit rate as listed on the Schedule and the actual units provided during the previous month of this Agreement as reported by the Provider using Wellsky. Total dollars reimbursed under this Agreement will not exceed the amounts listed on the Schedule. COA retains the right throughout the term of this Agreement to issue revisions to the Schedule, including unit rates, units planned, and dollars, if Provider's performance, change in funding, or other conditions warrant such action.
- D. In the event Provider is paid for services not allowable under the terms of this 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 overpayment amount to COA within ten (10) business days of receiving the written request for repayment.
- E. If necessary, adjustments may be made by COA, at intervals to be determined by COA, in order to reconcile differences between COA's disbursement of Title III/NSIP and/or State funds to Provider and the earning of such funds by Provider.
- F. Provider shall report the "Required Minimum Match monthly." Additionally, Provider shall furnish COA with proof of the "Required Minimum Match" upon request of COA. Failure to report the match or provide such proof may result in Provider remitting to COA, upon demand, all unearned funds.

- G. Provider shall maintain a service utilization rate of at least 90% for each service provided pursuant to the Agreement. For any service for which the Provider does not maintain an 90% service utilization rate, COA, in its sole and absolute discretion, retains the right to adjust funding, terminate the specific service from the Provider Agreement, or take such other action to benefit the program, up to and including, terminating the Agreement for all services the Provider is contracted to provide pursuant to the Agreement.
- H. The Provider is required to collect and report program income to COA as outlined in the service specification using a method established by COA. The current method of reporting program income is through an internet site called Zoomerang. COA reserves the right to change the method for submitting program income.

Provider shall allow and encourage voluntary contributions for services reimbursed with OAA funds:

1. Offer each consumer an opportunity to contribute voluntarily to the cost of the service.
2. Clearly inform each consumer that there is no obligation to contribute and that the contribution is purely voluntary.
3. Protect the privacy of each recipient with respect to the consumer's contribution or lack of contribution.
4. Establish appropriate procedures to safeguard and account for all contributions.
5. Use all contributions collected to expand the services under Title III/NSIP and or State funds for which the contributions were given.
6. Have a written policy that incorporates all of the above and is available for service recipients.

Provider may develop a suggested contribution schedule for services; however, Provider must consider the income ranges of older persons in the community. Means tests are not allowed. Provider may not deny any older person a service because the older person will not or cannot contribute to the cost of the service

- I. For Services that require cost sharing (see OAC Rule 173-3-07 and the Service Specifications available at www.help4seniors.org), provider shall establish a consumer cost sharing policy that includes:
 1. The sliding-fee schedule below which determines the percentage of the actual (or partial) contracted cost of a unit of service that the Provider shall suggest that a consumer pay based upon the consumer's individual income as a percentage of the federal poverty level found in the federal poverty guidelines, which are updated periodically in the federal register by the U.S. Department Of Health And Human Services under 42 U.S.C. 3302 (2);

SLIDING-FEE SCHEDULE	
INCOME LEVEL	SUGGESTED COST SHARE
149% and below	0%
150-174%	10%
175-199%	20%
200-224%	30%
225-249%	40%

250-274%	50%
275-299%	60%
300-324%	70%
325-349%	80%
350-374%	90%
375% and above	100%

2. A requirement to determine the consumer's individual income solely by the consumer's self-declaration with no requirement for verification;
 3. A procedure for collecting consumer cost-sharing payments from a consumer receiving consumer-directed services;
 4. A requirement to distribute written materials to consumers that explain: (a) The services subject to consumer cost sharing; (b) The procedure for sharing costs; (c) The sliding-fee schedule; and, (d) That a provider may not decline to provide a service because a consumer fails or refuses to share costs.
 5. A requirement to provide a receipt to a consumer or family caregiver who makes a payment;
 6. A procedure for safeguarding and accounting for all consumer cost-sharing funds collected;
 7. A requirement to retain records of all consumer cost-sharing funds collected;
 8. A requirement to keep the consumer's declaration of income (or non-declaration of income) and cost-sharing payment history confidential; and,
 9. A requirement to use the funds collected from consumer cost sharing to expand the capacity to provide the service for which the funds were given.
- J. Unexpended (left over) funds held by Provider at conclusion/termination of this Agreement shall be returned to COA.
- K. Provider shall return to COA any funds received for providing services if the provision of the service did not comply with the OAC, the Ohio Revised Code ("ORC"), or any other law that regulates the provider or the services provided.

SECTION III - RECORDS AND DOCUMENTATION, CONTROL POLICIES AND MONITORING

A. RECORDS AND DOCUMENTATION

1. Provider is required to store consumer records in a designated locked storage space.
2. Provider shall insure that any records relating to costs, work performed, supporting documentation for payment of work performed, all deliverables, and any other records necessary to fully disclose the extent of services provided under this Agreement are maintained and made available at all reasonable times for auditing or monitoring by COA, ODA, the state auditor, the inspector general, duly-authorized law enforcement officials, and agencies of the United States government (or designees of any of these entities). The above listed records and documentation are to be retained for not less than three (3) years from the expiration of this Agreement or submission of final report (whichever is later). If a monitoring or audit is initiated within the three (3) year period, the Provider shall retain the records until the monitoring or auditing is concluded and all issues or exceptions are

resolved, even if doing so requires the provider to retain records for more than three (3) years.

3. Provider shall not use or disclose any information, systems, records or other protected health information (45 CFR 160 and 164 (A) and (E)) made available to it by COA for any purpose other than to fulfill its obligations under this Agreement. 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 other regulations applicable to the program(s) under which this Agreement is funded.
4. Provider shall not use or disclose any information concerning a consumer for any purpose, directly associated with the provision of services, unless the provider has written documentation of the consumer's consent to do so.
5. Provider shall not use or disclose any information concerning a consumer for any purpose not directly associated with the provision of services, even if the consumer consents to doing so.

B. CONTROL POLICIES AND MONITORING

1. COA, ODA, the State Auditor, the Ohio Inspector General, the Department of Health and Human Services, the Comptroller General of the United States, or any of their duly authorized representatives, shall at all times have the right to inspect the sites, products, procedures and plans of Provider, books, documents, papers, and records of Provider which are directly pertinent to the specific Agreement for the purposes of conducting an audit, examination, taking excerpts, and making transcriptions, determining compliance with all applicable laws and regulations of any kind and the terms and conditions of this Agreement.
2. COA's Contract Auditor will perform a compliance and financial review. This review shall include a comprehensive review of all applicable documentation including but not limited to a test of consumer eligibility, and a review of documentation to verify compliance with the non-Federal matching and all other contract requirements. Provider shall cooperate fully to accomplish said audit. The timing of the audit performed shall be at the discretion of COA.
3. Provider shall retain all records relating to costs, work performed, supporting documentation for payment of work performed and all deliverables pursuant to this agreement and will file it in a manner allowing it to be readily located for monitoring by COA, ODA, or their duly authorized representatives. Adequate measures will be taken by COA to insure that records of a confidential nature will not be compromised. It shall be the responsibility of Provider to obtain releases of information from program participants for any personal information found in the records, data files, etc., maintained by Provider. The release shall permit authorized COA representatives to examine said personal information for evaluation and monitoring purposes. If, in the judgment of COA, the Provider is found to be in violation of this section or unable to carry out its provisions, COA at its option, upon written notice may suspend, amend, or terminate this Agreement.

4. Provider agrees to accept responsibility for receiving, replying to, and/or complying with any audit 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 audit(s) 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 audit exception. COA, at its sole discretion, may establish a repayment plan for the Provider, or may recover funds from future payments due Provider.
5. Provider agrees to submit to COA a copy of the annual independent certified public audit of the funds (financial audit) earned by Provider pursuant to this Agreement. COA requires an audit for each year funds are expended under this Agreement. Copies of the financial audit of funds expended under this Agreement are due within nine (9) months of the end of the program year (the program year ends September 30th). The auditor must use OMB Circular No. A-133 guidelines, if applicable. Non-submission or late submission of the required financial audit may be grounds to terminate this Agreement.

SECTION IV - HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, AS AMENDED (“HIPAA”)

Provider shall maintain adequate safeguards to prevent access, use or disclosure of individually identifiable health information. Provider agrees that it shall be prohibited from using or disclosing patient identifiable health information provided or made available for any purpose other than as expressly permitted or required by law and only after obtaining the consumer’s written, informed consent to do so. Provider ensures that any subcontractor or agent to whom it may disclose patient identifiable health information is bound by the confidentiality terms of this Agreement and by law. The Provider will retain consumer records in a secure manner, whether it is in a designated locked storage space, or within a secure, password protected, electronic file format.

SECTION V - INDEMNIFICATION

Provider hereby agrees to indemnify COA, together with its trustees, members, directors, officers, employees and agents (collectively, the “COA Parties”), and to hold the COA Parties harmless from and defend the COA Parties against any and all claims, demands, losses, liabilities, costs and expenses (including but not limited to reasonable attorney’s 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, Nothing herein shall limit the right of COA to participate in its own defense.

SECTION VI - APPLICABLE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS, AND ESTABLISHED POLICIES AND PROCEDURES

- A. This agreement is for the provision of goods or services paid with federal funds that the United States Department of Health and Human Services appropriated to the Ohio Department of Aging

(ODA). ODA, in turn, allocated the federal funds to the area agency on aging. The agreement is subject to federal laws and rules, state laws, and ODA's rules.

- B. Provider shall conform to the requirements of all applicable federal, state and local laws, federal circulars, regulations, and established policies and procedures incorporated by reference herein, including, but not limited to the following, all as may be amended from time to time:
1. Older Americans Act of 1965, as Amended
 2. OAC, including but not limited to, Chapter 173-3-01 - 173-3-09 the rules relating to provider contracts and service delivery and Chapter 173-4-01 - 173-4-09 relating to nutrition and nutrition related services;
 3. COA Policies and Procedures, including Service Specifications;
 4. Provider's Proposal submitted in response to "Request For Proposal From Established Organizations To Provide Services Funded By Title III Of The Older Americans Act, NSIP and Senior Community Services State Subsidy;"
 5. Civil Rights Act of 1964, as Amended;
 6. Section 504 of the Rehabilitation Act of 1973, as Amended, if direct services are provided on the premises;
 7. Age Discrimination Act of 1975, as Amended;
 8. 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;
 9. Age Discrimination Act of 1975, as Amended;
 10. Age Discrimination in Employment Act of 1967, as Amended;
 11. Americans with Disabilities Act of 1990;
 12. State and local health, fire, safety, zoning, and sanitation codes;
 13. Drug Free Workplace Act of 1988.
 14. Federal, State, and local regulations regarding taxes, unemployment, Workers Compensation, etc.
 15. Health Insurance Portability and Accountability Act ("HIPAA").
 16. Family Medical Leave Act ("FMLA") and
 17. Uniformed Services Employment and reemployment Rights Act ("USERRA").
- B. Provider shall, at its sole cost, comply with the criminal records background check requirements in accordance with ORC Section 173.38 and OAC Rule 173-9-01 through 173-9-10.
- C. Provider shall incorporate the foregoing requirements in all subcontract agreements for work hereunder.
- D. Provider shall, upon request, furnish COA with Provider's payment of wages policy, as evidence of compliance with the Fair Labor Standards Act.

SECTION VII - EQUAL EMPLOYMENT OPPORTUNITY

- A. In carrying out this Agreement, Provider shall not discriminate against any employee or applicant

for employment because of race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability or Vietnam-era Veteran status. Provider shall ensure that applicants are hired, and that employees are treated during employment without regard to their race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability or Vietnam-era Veteran status. Such action shall include but not be limited to the following: Employment; Upgrading; Demotion or Transfer; Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and selection for Training, including Apprenticeship.

- B. Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Provider will 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 the Provider, state that all qualified applicants shall receive consideration for employment without regard to race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability or Vietnam-era Veteran status.
- C. Provider shall incorporate these requirements in all subcontracts for work completed under this Agreement.
- D. Provider shall update its Affirmative Action Plan annually, and upon request, shall furnish COA with its antidiscrimination and affirmative action plan as evidence of compliance with Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Executive Order 11246 and Revised Order No 4, if applicable, the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

SECTION VIII - DEBARMENT AND SUSPENSION

Provider certifies by entering into this Agreement, that neither it nor its principals are listed on the non-procurement portion of the General Services Administration's "Excluded Parties List System" ("EPLS") and are not presently 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, member, manager, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of 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

SECTION IX - INSURANCE

- A. Provider, at Provider's sole cost and expense, shall carry and maintain in full force, with no interruption of coverage during the term of this Agreement the following:
 - 1. Comprehensive general liability insurance not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. 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) days in advance of any change, cancellation, or non-renewal of coverage.

2. Third Party Fidelity or similar insurance covering consumer loss due to theft of consumer's property or money, or property damage, by any employee or volunteer of Provider.
Additionally, Provider shall furnish COA with a written procedure describing the step-by-step instructions a consumer must follow to file a claim.
 3. Workers Compensation coverage for the State(s) in which the employees are eligible for benefits.
 4. Fidelity bond covering all individuals authorized by the Provider to collect and/or disburse funds.
 5. Automobile liability insurance, as applicable, covering all vehicles leased or owned by provider that are used or operated to deliver of service(s) provided under this Agreement. i.e. transportation, adult day service transportation, meals delivery. The Certificate of Insurance shall indicate Provider has the appropriate coverage against claims for injury and/or death in the amount not less than \$1,000,000 per occurrence, unless there is a greater amount otherwise required by the OAC or other federal, state, or local rules under which the Provider is required to operate.
 6. Professional liability insurance for providers of Adult Day Services, and legal assistance insuring Provider and such professionals against any and all claims, actions, causes, cost and expense relating to or arising out of the performance of services under this Agreement. The minimum amount of coverage shall be \$2,000,000 for each incident and \$2,000,000 annual aggregate.
- B. Provider further agrees that in the event its commercial general liability policy or professional liability policy (if required) 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 applicable to claims thereby insured notwithstanding the termination of this Agreement.
- C. Provider shall have all the above described insurance in full force and in effect prior to the commencement of services under this Agreement. The insurance must be maintained through a carrier licensed to provide insurance in Ohio and reasonably acceptable to COA.
- D. Provider understands it is responsible for ensuring a current Certificate of Insurance is received by COA's 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.
- E. Cancellation or non-renewal of required insurance, or not furnishing COA with evidence of required insurance coverage shall be grounds for COA to suspend or terminate this Agreement.
- F. The insurance required under this Agreement shall cover the acts or omissions of both paid employees and volunteers working for Provider.
- G. Provider shall require the same amount of insurance from all subcontractors utilized under this Agreement.

SECTION X - AMENDMENT / MODIFICATION

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

SECTION XI - TERMINATION

Except as otherwise provided herein, either party may at any time during the term of this Agreement or any extension thereof, with or without cause and without having to show a breach, terminate this Agreement, or any service(s) offered pursuant to this Agreement by giving sixty (60) days' notice in writing to the other party of its intention to do so. Provider must notify COA in writing of its intent to terminate this Agreement prior to notifying consumers being served by Provider for COA under this Agreement of such termination. In addition, this Agreement, or any service(s) offered pursuant to this Agreement, may be suspended or terminated at any time (without 60 days written notice) by COA for good and just cause as determined within the sole discretion of COA, including but not limited to, unsatisfactory Provider performance, funding decline, or if a situation arises that was unforeseen at the time the parties entered into this Agreement. Examples of unsatisfactory Provider performance include, but are not limited to, not maintaining the required 90% utilization rate for all services contracted to Provider pursuant to this Agreement. Examples of unforeseen situations include, but are not limited to, a change in market condition or a change in law that regulates the service(s) or program offered pursuant to this Agreement. 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 federal, state, or local funds.

Additionally, COA may terminate this Agreement without obligation or liability to COA if ODA determines, through the appeals process or through monitoring, that this Agreement was entered into inappropriately.

SECTION XII - ASSIGNABILITY

- A. Provider shall not assign, subcontract, or transfer its rights and duties under this Agreement without the prior written consent of COA, which may be withheld in COA's sole and absolute discretion. COA and Provider each bind themselves, their permitted successors and assignees to this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, trustee, employee or agent of either COA or Provider.
- B. If Provider is being purchased by, or merged with, another entity (even if the purchasing/merging entity has an existing Agreement with COA), the Provider shall provide written notice to COA at least sixty days (60) prior to the effective date of such merger or purchase. Provider must notify COA prior to notifying consumers being served by Provider for COA under this Agreement of such

purchase or merger. Provider acknowledges that a purchase of or merger with another entity may affect the terms of this Agreement. Upon receipt of written notification, COA will notify Provider of any effect such a merger or purchase will have on this Agreement.

- C. If Provider subcontracts any services offered under the Agreement, Provider is solely responsible for assuring subcontractor(s) meet all applicable terms and conditions of this Agreement and all applicable federal, state, and local laws and regulations. Such subcontracts shall be in writing, current, and available to COA upon request.

SECTION XIII - NOTICE REQUIREMENTS

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

If to COA to: Council on Aging of Southwestern Ohio
175 Tri County Parkway
Cincinnati, OH 45246

Attention: Suzanne Burke
Chief Executive Officer

If to Provider to:

<<PROVIDER NAME>>
<<PROVIDER ADDRESS>>
<<PROVIDER ADDRESS>>

Attention: <SIGNATORY NAME>
<SIGNATORY TITLE>

SECTION XIV - MISCELLANEOUS

A. APPEALS:

Provider shall have the right of appeal regarding actions taken by COA pertaining to this Agreement per the COA Appeals Process Policy and OAC Rule 173-03-09. (See Appendix D of the 2019 Title III RFP)

B. CONFLICT OF INTEREST:

Provider agrees to have in force a written conflict of interest policy that, at a minimum:

1. Applies to the procurement and disposition of all real property, equipment, supplies, and services by the agency and to the agency's provision of assistance to individuals, businesses, and other private entities.
2. Provides that no employee, board member, or other person who exercises any decision-making function with respect to agency activities may obtain a personal or financial benefit from such activities for themselves or those with whom they have family or business ties during their tenure with the agency.
3. Assures that no immediate family member of any person(s) employed by the Provider can be a member of the Provider's Board of Trustees or ruling body.
4. Assures that no purchase of supplies, vehicles, or equipment is made with COA funds from any person(s) employed by the Provider or from an immediate family member of any employee. An immediate family member is defined as spouse, parent, grandparent, brother, sister, child, or in-law.

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 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 and applicable law.

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.

D. MEDIA, PUBLIC RELATIONS, AND OUTREACH:

Provider shall collaborate with COA to help ensure that media relations, public information, and outreach related to the Title III Program are mutually beneficial to the Provider and to COA including any use of social media.

Any Title III outreach campaigns, including media relations, shall be coordinated with the COA Communications Director prior to planning such campaigns.

Per OAC rule 173-3-06, Section (B)(4)(b) , provider is prohibited from using or disclosing any information concerning a consumer for any purpose not directly associated with the provision of services, even if the consumer consents to doing so.

Program information, whether in print or electronic format, shall include, at a minimum, the COA Agency Partner logo and a statement that the program or service receives funds 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.

News releases do not have to include the COA Partner Logo, but if the news release concerns a Title III-funded program or service, it should state that the program receives funds administered by Council on Aging of Southwestern Ohio. In media interviews, there should be informal, verbal acknowledgement of COA. In the spirit of this agreement, Provider should include the COA Agency Partner logo in paid advertisements whenever this is possible without incurring additional expense due to increased advertisement size. The COA Agency Partner logo can be downloaded from the COA website, www.help4seniors.org, under Service Provider Information. Or, upon request to the Communications Director, COA will furnish Provider with logo in digital format.

If Provider has a website that includes content about the Title III Program, Provider shall establish and maintain a link from the TITLE III section to the COA website, www.help4seniors.org.

If contacted by the news media regarding any major unusual incident, Provider is not to respond to the media inquiry, but must immediately, as soon as possible within one hour, contact COA's Communications Manager by phone or e-mail. For major unusual incidents see paragraph "E" of this section.

COA Communications Manager can be reached by phone at (513) 345-3315 or (513) 509-9211 (mobile phone) or e-mail Psmith@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 this Agreement scope of work, deliverables required under this Agreement, results obtained under this 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 this Agreement.

Nothing in this section is meant to restrict Provider from using Agreement information to market to specific consumers 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 this Agreement, Agreement terms and conditions, scope of work under this Agreement, deliverables and results obtained under this Agreement, impact of Agreement activities, and assessment of Providers' performance under this Agreement.

E. MAJOR UNUSUAL INCIDENT (INCLUDING ABUSE, NEGLIGENCE, OR EXPLOITATION)

Provider shall have a written policy detailing procedure for reporting major unusual incidents.

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

A major unusual incident is any alleged, suspected, or actual occurrence of an incident/event that could adversely affect the health or safety of a consumer, the credibility of Provider's staff or organization, or any incident in which COA or Provider may have liability. Major unusual incidents include, but are not limited to: abuse; neglect; suspicious accident; death from abuse, neglect, serious injury, or any reason other than natural causes; criminal or suspected criminal acts; a police, court/legal, or public complaint which has the potential to be reported to the media or elected officials or any in which COA or Provider may have liability; lawsuit or potential lawsuit.

Additionally, any Provider who is a mandatory reporter shall immediately notify the county department of job and family services, or the agency the county department of job and family services designates to provide adult protective services, once the provider has reasonable cause to believe a consumer is the victim of abuse, neglect, or exploitation, and has the consent of the consumer in accordance with section 5101.63 of the Revised Code.

F. SPECIAL CONDITIONS

Provider also agrees to the following special conditions:

1. Immediately notify COA's Manager of Provider Services of any incident that poses a health risk or may be viewed as a risk to the health and safety of any consumer. COA's Manager of Provider Services can be reached by phone at (513) 721-1025.
2. Notify COA's Manager of Provider Services of any interruption in service to all consumers or to a significant number of consumers served by Provider.
3. Include the phrase "Funded by the Ohio Department of Aging through Council on Aging of Southwestern Ohio" on all program literature purchased with Title III or State funds and whenever possible include the COA logo. (See section D above for usage information and instructions on obtaining logo.)
4. Menus of all Title III meals served under this Agreement must be approved by COA's dietitian or nutrition personnel.
5. Designated staff members, as applicable, are trained in first aid and CPR procedures.
6. Maintain an advisory council or Board of Trustees.
7. Assure that where State or local public jurisdictions require licensure for the provision of services, Provider will be licensed.
8. Cooperate with COA and ODA to assess the extent of the disaster impact upon persons aged sixty years and over, and to coordinate the public and private resources in the field of aging in order to assist older disaster victims whenever the President of the United States

or a local emergency management official declares that the Provider's service area is a disaster area. COA may also call upon Provider to assist in times of other disaster or emergencies as deemed necessary by COA.

9. Fulfill all NAPIS reporting requirements of ODA and COA.
10. Provider using the caterer or caterers designated by COA (each a "Caterer") as the vendor (meal preparation and delivery) for meals provided by the Caterer agrees to process payment to the Caterer within forty-five (45) days of receipt of invoice from the Caterer.
11. All meals supervisors shall attend meal supervisor training sessions and meetings sponsored by COA.
12. 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.
13. Unless Provider has received a prior waiver from COA, Provider agrees to use the food service vendor specified by and under contract with COA (hereafter referred to as food service vendor) as the vendor for all Catered Meals. In order to ensure food quality and service, COA has conducted a bid process, selected and contracted with a food service provider to be the sole vendor for Catered Meals, whether served at a Congregate Meal site or served as Home Delivered Meals. Provider agrees to process payment to the food service vendor within forty-five (45) calendar days of receipt of monthly invoice from the food service vendor.
14. Provider will notify COA care management staff of any significant change that may necessitate a reassessment of the case-managed consumer's need for goods or services no later than one day after the provider is aware of a repeated refusal to receive goods or services; changes in the consumer's physical, mental, or emotional status; documented changes in the consumer's environmental conditions; or, other significant, documented changes to the consumer's health and safety.
15. Provider will notify COA and the consumer in writing of the anticipated last day of service to a consumer in a care-coordination program no later than thirty (30) business days before the anticipated last day of service, unless the reason for discontinuing the service is the hospitalization, institutionalization, or death of the consumer; serious risk to the health or safety of the provider; the consumer's decision to discontinue the service; or a similar reason why the provider is unable to notify COA thirty (30) days before the anticipated last day of service. Provider shall also notify the consumer how he or she may reach a long-term care ombudsman.

G. BREACH / WAIVER OF BREACH:

If Provider has materially breached the terms of this Agreement, COA agrees to deliver to Provider a written notice detailing the nature of the breach and the timeframe within which the breach must be corrected (generally 10 days after receipt of the written notice thereof). If Provider has not corrected the breach within the timeframe specified by COA, COA, at its sole discretion, may sanction, suspend or terminate this Agreement upon written notice of such sanction, suspension or termination.

Notwithstanding anything herein to the contrary, in the event that COA determines Provider is in breach of this Agreement, COA shall have the right to withhold 5% of the next monthly payment due to Provider hereunder, pending Provider's cure of the breach to COA's satisfaction. In such event, one-half of said 5% withheld shall be paid to Provider upon cure of the breach, and the remaining one-half shall be paid to Provider 90 days after the cure of the breach so long as Provider is not then otherwise in breach of this Agreement. Such right to withhold is in addition to, and not in limitation of, COA's other rights and remedies under this Agreement or Ohio law in the event of Provider's breach of this Agreement.

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.

H. SEVERABILITY:

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

I. PRIORITY OF DOCUMENTS:

The Agreement, the RFP, the Application, the Ohio Department of Aging Current Administrative Rules and other documents referenced therein shall be read so as to complement each other. However, in the event of an irreconcilable conflict in the terms thereof, the Ohio Department of Aging Current Administrative Rules shall control, then the provisions of this Agreement; then the RFP, then the Application, and then other documents referenced herein.

J. 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.

K. 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.

L. 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.

M. 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.

N. NOTICES & REPORTING:

To the extent neither prohibited by law nor violative of applicable privilege, Provider agrees to provide notice to COA, and shall provide follow-up information reasonably requested by COA regarding the nature, circumstances, and disposition, of: (a) the result of any litigation brought against Provider or any of its employees, that is related to the provision of COA Services or Covered Services; (b) the result of any investigation initiated by any government agency or program against or involving Provider or any of its employees that does or could materially impact and/or adversely affect Provider's licensure, or certification to participate in the Medicare, Medicaid or other Government Programs; (c) any change in the ownership or management of Provider other than a change in which beneficial ownership and control remains with the existing

owners, directors, or officers; and (d) any material change in services provided by Provider or licensure status related to such services that has a material impact on the delivery of services under this Agreement. Provider agrees to use best efforts to provide COA with prior notice of, and in any event will provide notice as soon as reasonably practicable notice of, any actions taken by Provider described in this Section.

SECTION XV - TERM OF THE AGREEMENT

This Agreement by and between Provider and COA shall be effective <<DATE>> and shall remain in effect, unless amended or terminated by one or both of the parties, through <<DATE>>.

This Agreement 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.

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

Provider:

<<PROVIDER NAME>>.
<<PROVIDER ADDRESS>>
<<PROVIDER ADDRESS>>

_____ Date: _____
<Signatory Name>
<Signatory Title>

COA: Council on Aging of Southwestern Ohio
175 Tri County Parkway
Cincinnati, OH 45246

_____ Date: _____
Suzanne Burke
Chief Executive Officer

