



**REQUEST FOR PROPOSAL (RFP)**

**RFP: 002-22**

**HOME CARE ASSISTANCE**

**CLINTON COUNTY**

**ELDERLY SERVICES PROGRAM**

**Council on Aging of Southwestern Ohio  
2333 Rombach Avenue  
Wilmington, Ohio 45177**

**Proposal Due Date: Thursday, June 30, 2022, by 12pm EST**

## **Table of Contents**

<b>Section One: General Information .....</b>	<b>3</b>
<b>Section Two: Home Care Assistance Demographics .....</b>	<b>7</b>
<b>Section Three: How Is This RFP Different From The Previous RFP .....</b>	<b>8</b>
<b>Section Four: Proposal Submission Requirements .....</b>	<b>9</b>
<b>Section Five: Pricing .....</b>	<b>11</b>
<b>Section Six: Proposal Evaluation .....</b>	<b>13</b>
<b>Section Seven: Required Forms &amp; Documentation .....</b>	<b>18</b>
<b>Section Eight: General Terms &amp; Conditions .....</b>	<b>23</b>

**APPENDIX A: Emergency Preparedness Plan**

**APPENDIX B: Computer Hardware & System Requirements**

**APPENDIX C: Sample Agreement**

**APPENDIX D: Sample Business Associate Agreement**

**APPENDIX E: Appeals Process**

**Attachment 1: Elderly Services Program Conditions of Participation**

**Attachment 2: Elderly Services Program HCA Service Specification  
(Clinton County)**

## **Section One: General Information**

### **Bid Overview**

Council on Aging of Southwestern Ohio (COA) embraces the principle of person-centered direction and service. Person centered direction places individualized client needs and preferences at the forefront of service delivery. This principle applies to consistent homecare service delivery that improves the client’s homecare experience.

COA is accepting proposals from qualified Bidders interested in contracting with COA to become an Elderly Service Program (ESP) home care provider for homemaking, personal care, companion, and respite services for delivery to older adults. This service is called Home Care Assistance (HCA). This RFP is for the delivery of Home Care Assistance in Clinton County.

The goal of this RFP is to attract the highest quality providers for the lowest cost while meeting the requirements and demand for services for growing senior needs.

The contract period is August 1, 2022, to September 30, 2025, with two (2) additional one (1) year renewable options.

All Bidders must meet the Conditions of Participation, Service Specifications, and all terms and conditions within this document, including all Appendices and Attachments, if selected to receive an Agreement. **Please read this document in its entirety.**

### **Important Dates**

<b>Request for Proposal Number</b>	<b>Proposal Name</b>
<b>RFP 002-22</b>	<b>Home Care Assistance</b>
<b>Important Dates</b>	
<b>Bidders Conference</b>	<b>Friday, June 17, 2022 11:00 am – 12:00 pm</b>
<b>Last Day to Submit Questions</b>	<b>Tuesday, June 21, 2022</b>
<b>Last Day for COA to Answer Questions</b>	<b>Friday, June 24, 2022</b>
<b>Proposal Due Date</b>	<b>Thursday, June 30, 2022, by 12pm EST</b>
<b>Estimated Award Date</b>	<b>The week of July 18, 2022</b>
<b>Transition Period</b>	<b>August 2022</b>
<b>Tentative Contract Start Date</b>	<b>Monday, August 1, 2022</b>

All questions regarding the RFP must be put in writing and submitted to:

[provider\\_services@help4seniors.org](mailto:provider_services@help4seniors.org)

Submitted questions must reference **RFP 002-22: Home Care Assistance.**

Only questions submitted in writing to this e-mail address will receive a response. All questions must be submitted no later than June 21, 2022. Responses to questions submitted will be posted on COA's website at [COA ESP Requests for Proposals \(RFPs\)](#) no later than June 24, 2022.

### **Bidders Conference**

A virtual, online Bidders Conference regarding this RFP will be held **Friday, June 17, 2022, at 11:00 a.m.**

COA will conduct a bidder's conference to review the RFP and answer questions from prospective bidders. Anyone interested in learning more about this RFP should send an email of interest to [provider\\_services@help4seniors.org](mailto:provider_services@help4seniors.org). A link to the Bidders Conference then will be emailed to the inquiring Bidders. **Emails of interest to attend the Conference must be received no later than Wednesday, June 15, 2022.**

We ask that any questions the Bidder's wish to have addressed in this meeting be submitted in writing to: [provider\\_services@help4seniors.org](mailto:provider_services@help4seniors.org) **no later than Tuesday, June 14, 2022.**

### **Proposal Delivery**

Each sealed submission must include **one (1) signed original proposal and one (1) copy. We strongly recommend submission of a flash drive containing an electronic version (\*.doc or \*.pdf) of the original proposal document with all narratives and forms scanned as a single document, however, this is not a requirement.** For confidentiality purposes, on the electronic version, financial information can be marked "proprietary" or "confidential," scanned, and included as a separate file.

Please have the signed original and copy of your proposal divided into sections based on the Proposal Submission Requirements found in Section Four (4) of this RFP. You can find the second (2nd) level evaluation requirements on pages 15 through 16 of this RFP.

**All sealed bids must be received no later than NOON Eastern Standard Time on Thursday, June 30, 2022.** If the prospective bidder wishes to hand deliver their proposal COA staff will only be accepting bids **in person at the Clinton County Office, 2333 Rombach Avenue, Wilmington OH 45177 on Thursday, June 30, 2022, from 10 a.m. to 12:00 p.m.**

Bids may also be submitted via courier, delivery service, or via United States mail. **If submitting a proposal by via courier, delivery service, or United States mail, send to the COA main office at 4601 Malsbary Road, Blue Ash, OH 45242.**

COA strongly encourages hand delivery to COA staff to minimize the risk of late delivery via a courier/delivery service. The Bidder is responsible for ensuring the bid arrives at COA's office prior to the

submission deadline. If a receipt of delivery is desired by the Bidder, the Bidder is responsible for using a form of delivery service that supplies them with a timed and/or dated delivery receipt.

Sealed bids not being hand-delivered must be sent to:

Council on Aging of Southwestern Ohio  
Attention: Provider Services Manager  
4601 Malsbary Road  
Blue Ash, Ohio 45242

**No late bids will be accepted.** COA is not responsible for, and will not open or consider, proposals arriving after the deadline because of missed delivery, improper address, insufficient postage, accident, or any other cause.

### **Integrity of the Procurement Process**

During the procurement process, bidders interested in responding to the solicitation may submit questions via email only to the Provider Services team regarding procedural matters related to the RFP, or requests for clarification or modification of this solicitation, no later than the due date and time as set forth in the RFP. Questions or requests submitted after the due date and time will not be answered.

Prospective service providers shall not contact any Council on Aging personnel (with the exception of the Provider Services team), board or advisory council members, or program funders, including elected officials, for meetings, conferences, or discussions that are specifically related to this RFP at any time prior to any Notice of Intent to Award a contract. Unauthorized contact with any Council on Aging personnel, board or advisory council members, or its funders, including elected officials, may be cause for rejection of the vendor's proposal.

### **Agency and Program Background**

Council on Aging of Southwestern Ohio (COA) was established in Cincinnati in 1970 and was incorporated as a nonprofit agency in December 1971. In 1974, COA was designated by the Ohio Commission of Aging, now the Ohio Department of Aging (ODA), as the Area Agency on Aging for Butler, Clermont, Clinton, Hamilton, and Warren counties. These five counties comprise Planning and Service Area Number 1 (referred to as PSA-1) in the State of Ohio.

As a part of COA's services, COA provides Home Care Assistance (HCA) through the Elderly Services Program (ESP). HCA is a service designed to allow for the client to remain safe and independent in their home. Examples of HCA include but are not limited to personal care service such as assistance with bathing or dressing; homemaking service such as assistance with laundry, meal preparation, changing bed linens, mopping, dusting, or sweeping the floor; companion services such as communicating with the client to prevent isolation; respite service such as staying with the client to allow the caregiver to take care of personal needs and tasks that cannot be accomplished while staying with the client.

Historically, COA has purchased this service in the following manner: Established organizations interested in providing Home Care Assistance for ESP submit a proposal to COA through an RFP process. If the organization meets the RFP requirements, the organization is then required to evidence compliance with

the ESP Conditions of Participation and Service Specifications. An organization meeting all requirements to COA's satisfaction will be awarded an Agreement/Contract to provide the service.

Contracted providers would be eligible to bid on referrals and receive awards to furnish HCA services to eligible ESP clients as referred by the client's Care Manager.

COA has a history of procuring services in this manner for the Elderly Services Program since the inception of the program in Hamilton County in 1992. COA is the administrator of the Elderly Service Program in Butler, Clinton, Hamilton, and Warren Counties.

Bidders receiving awards through this RFP process must agree to provide services in accordance with the Service Specification and Conditions of Participation.

**Please note:**

- COA shall award contracts based on the review and evaluation of proposals.
- This is a competitive bid process and COA cannot guarantee all bidders will be awarded contracts. Having a contract in the past does not assure a bidder of a contract in response to this RFP.

**FastTrack Home Program Background**

FastTrack Home (FTH) is a program that provides Care Transition Intervention and traditional ESP services to eligible older adults who are being discharged from a hospital or skilled nursing facility/rehabilitation center. Care transition case management support and services are provided for up to 60 days at no cost to the client. Our Care Managers will help clients establish long term support through ESP and other COA programs if needed.

FTH provides Care Transitions Intervention based on the Coleman Model. This is an evidenced based model with proven success. With addition of support services starting within 24 hours of discharge our clients are prepared to successfully transition and remain at home.

Due to the COVID Pandemic - Our FTH Team has asked that we make you aware of the expectation surrounding referrals encompassing: SURGE DISCHARGE CLIENTS URGENT in the note section of the referral. As with all the FTH referrals, it is our expectation that if you accept the Request for Services (RFS), services will start within 24 hours. This expectation is the same for those referrals that include SURGE DISCHARGE CLIENTS URGENT in the note section of the referral. We ask that you do not accept these referrals if you are unable to start services within the 24-hour timeframe.

## Section Two: Home Care Assistance Demographics

Historically Clinton County ESP has not had the Home Care Assistance (HCA) service available. Home care services for Clinton County residents has consisted of homemaking, personal care, and respite services. The table below shows the approximate volume based on these three (3) services for ESP and FastTrack Home (FTH) Home Care clients in Clinton County including hours billed in calendar year 2021.

*Clients and Units by Program billed in 2021.*

County	Service	Distinct Clients	Hours billed
Clinton County ESP	Homemaking	426	19,323
Clinton County ESP	Personal Care	91	3,821
Clinton County ESP	Respite	30	591

## **Section Three: How Is This RFP Different From The Previous RFP**

### **Change of Service Specification**

Please note that the Service Specification has been updated and is pending approval from the Clinton County Advisory Council. You can find a copy of the proposed Home Care Assistance (HCA) Service Specification in **Attachment Two** (2) of this RFP.

### **Software and Billing**

All Providers are required to use COA's care management and provider management platform – CareDirector. The computer and system hardware requirements are outlined in **Appendix B** of this RFP.

### **Requirements for New Providers**

Any bidder whose proposal successfully completes the evaluation process, but who does not have a current ESP contract for HCA with COA, is subject to a precertification review prior to receiving a provisional HCA service agreement. All new bidders must meet the requirements for the Home Care Assistance program.

Awarded providers, new to the ESP program, will not be eligible to accept clients until after the precertification review and CareDirector training is complete.

## **Section Four: Proposal Submission Requirements**

***A complete bid proposal includes the following:***

### **1) Bid Forms and Documentation:**

- Bidder's Information Form (Section 7)
- Certificate of Secretary of State - current and in good standing (Section 7)
- Current Bureau of Workers' Compensation Certificate (Section 7)
- Certificate of Insurance evidencing the Bidder's liability meets the proper requirements as outlined in Section 7
- Bidder's Certification of Payment of Personal Property Tax (Section 7)
- Debarment, Suspension, Ineligibility and Exclusion Certification (Section 7)
- Non-Collusion Affidavit (Section 7)

### **2) Evaluation responses:**

- 1<sup>st</sup> Level Evaluation response (Section 6) containing:
  - i. Prior year financial statements (Balance Sheet and Income Statement)
  - ii. Most recent independent audited financial statements – if unavailable, most recent unaudited financial statements certified as being true and correct by the Chief Financial Officer of the Bidder
  - iii. Most current interim financial statements. If financial statements are unavailable, provide:
    - 1. Prior year's tax return (All Schedules)
    - 2. Excel spreadsheet of current year's Revenue and Expenses
  - iv. A/P Aging (classified in 30, 60, 90 days past due)
  - v. Dated statement from a contracted CPA or an internal officer confirming that all federal, state, and local income and employment tax payments are current and paid through the most recent tax year.
- 2<sup>nd</sup> Level Evaluation response (Section 6)
- 3<sup>rd</sup> Level Evaluation response (Section 6)

### 3) Pricing:

- Bid Rate Sheet for Years 1 - 3, including optional renewals for years 4 and 5 (Section 5)

### 4) Proposal:

- One (1) signed original and one (1) copy. We strongly recommend submission of a flash drive containing an electronic version (\*.doc or \*.pdf) of the original proposal document with all narratives and forms scanned as a single document, however, this is not a requirement.**
- The **signed original proposal** should be divided into sections based on the Proposal Submission Requirements found above in this section.

## Section Five: Pricing

### Instructions:

- Bidders are required to complete the **Bid Rate Sheet for Home Care Assistance**, on page 12 of this RFP, for Years 1, 2, 3, as well as the options to renew for Years 4 and 5 in order for the bid to be considered complete.
- One unit of HCA service is equal to 15 minutes of HCA service.
- When submitting a proposed rate please base the rate on a 15-minute unit of service.
- The Bid Rate Sheet is a fillable form so that bidders can type their proposed unit rates to ensure visibility.

**Bid Rate Sheet for RFP 002-22: Clinton County ESP Home Care Assistance**

**Directions:** Place your per **unit price** in the appropriate box(es) for each of the **five (5) years** listed in the bid rate sheet below. Please remember that **one unit of HCA is equivalent to 15 minutes of services.**

**Agency Name:** \_\_\_\_\_

**Contract Years 1 through 3** **\*One HCA Unit of Service = 15 minutes of HCA service\***

County	Zone	Rate Per Home Care Assistance (HCA) Unit		
		Year One Bid Rates August 1, 2022 - Sept 30, 2023	Year Two Bid Rates Oct 1, 2023 - Sept 30, 2024	Year Three Bid Rates Oct 1, 2024 - Sept 30, 2025
CLINTON COUNTY	ENTIRE COUNTY			

**Optional Renewal Years 4 and 5** **\*One HCA Unit of Service = 15 minutes of HCA service\***

County	Zone	Rate Per Home Care Assistance (HCA) Unit	
		Year Four Bid Rates Oct 1, 2025 - Sept 30, 2026	Year Five Bid Rates Oct 1, 2026 - Sept 30, 2027
CLINTON COUNTY	ENTIRE COUNTY		

## **Section Six: Proposal Evaluation**

COA shall award a Service Agreement to the bidder(s) who submit the best proposal(s) based on evaluation of all bids as determined by COA, in its sole discretion, unless COA rejects all bids.

COA reserves the right to reject any or all bids, any part, or parts of any Bid, and the right to waive any informality in any Bid. Any Bid which is conditional, obscure, or which contains additions not requested, or irregularities of any kind may be rejected.

COA reserves the right to make changes in program requirements, procedures, and terms after the bids have been submitted, opened, and reviewed to maximize delivery of services consistent with the objectives of the Home Care Assistance Program

COA reserves the right to apply any of the following, if warranted, in COA's sole opinion:

- Negotiate price
- Award to multiple providers
- Eliminate any term or condition that is not advantageous to COA, its clients, or funders.
- Set ceiling/maximum rates for services provided resulting from this RFP

Bid proposals will be evaluated based on a Bidder's (1) Financial Analysis and Stability, Certificate of Insurance, and Workers Compensation Certificate, (2) The Organization and Capabilities Overview, (3) Personnel, Staffing and Training, and (4) Pricing. There are four categories of review identified in the tables below. The first category evaluation determines if the proposal meets the requirements of the RFP - that the organization is financially stable. Bidders not meeting the first category evaluation criteria may not be considered further. The second category evaluation is for the organization and capabilities. The third category evaluation scores are for Personnel, Staffing and Training. The fourth category evaluation is based on Pricing. The tables below provide criteria, descriptions, and scoring guidelines.

### **Selection**

COA will form a review committee made up of representatives from various functional areas. This review committee will base its recommendation on the evaluation criteria set forth in this RFP. The committee will conduct an initial evaluation based on information in the submitted proposals.

Proposals will be evaluated and scored based on the information given by the bidder in this section. The examples of scoring are provided in each section, if applicable.

### **Scoring of Submission**

The committee will base the evaluations on the following criteria:

<b>Description</b>	<b>Evaluation Criteria</b>
1 <sup>st</sup> Category Evaluation- Go/No Go Criteria	Submitted Documentation
2 <sup>nd</sup> Category Evaluation- The Organization and Capabilities	0-9 points
3 <sup>rd</sup> Category- Personnel, Staffing, and Training	0-6 points
4 <sup>th</sup> Category Evaluation- Pricing	Complete based on requested pricing information, and competitive with other proposals

## 1<sup>st</sup> Level Evaluation: GO/NO GO CRITERIA

These are YES/NO criteria. Any submission with 1 or more "NO" answers will be discussed with the review committee to determine if further evaluation will be afforded or granted.

Number	Category	Examples for Scoring	Points
1. Financial Stability, Insurance, Workers' Compensation	<ol style="list-style-type: none"> <li>1. Provides prior year's tax return (including all schedules) and prior year's statement of revenue and expenses.</li> <li>2. Provides dated statement from a contracted CPA or an internal officer confirming that all federal, state, and local income and employment tax payments are current and paid through the most recent tax year.</li> <li>3. Provides Certificate of Insurance evidencing Bidder's liability insurance meets proper requirements.</li> <li>4. Provides Current Workers' Compensation Certificate.</li> </ol>	<p><b>GO:</b> No material findings present on audited financial reports. Provides current Certificate of Insurance and Workers' Compensation Certificate.</p> <p><b>NO GO:</b> Financial data not provided, or audits contain material findings or unaudited financials show lack of financial stability. Unable to provide Certificate of Insurance and Workers' Compensation Certificate.</p>	<p><b>GO</b></p> <p><b>NO GO</b></p>

## 2nd Level Evaluation: The Organization and Capabilities Overview

This level of the evaluation will be evaluated using the categories as shown below.

Number and Heading	Category	Examples for Scoring	Points
1. Quality management, monitoring, and improvement process	<p>Describe how your agency:</p> <ul style="list-style-type: none"> <li>• Incorporates policies, processes, and activities to reduce risk and improve all aspects of service delivery.</li> <li>• Addresses issues and concerns in a timely manner.</li> <li>• Solicits feedback from clients, employees, management, and other stakeholders such as COA for performance improvement.</li> </ul>	<p><b>Example 0 points-</b> No information provided.</p> <p><b>Example 1 point-</b> Proposal does not include a policy or process for quality management, monitoring, or improvement.</p> <p><b>Example 2 points-</b> Proposal includes a policy or process for quality management, monitoring or improvement with no examples or details of how data is collected or used.</p> <p><b>Example 3 points-</b> Proposal includes a policy or process for quality management, monitoring, or improvement. Proposal describes how feedback is solicited and used to maintain or improve performance. Proposal includes examples and details of how issues and concerns are addressed, how data is collected and used.</p>	<b>0-3</b>
2. Electronic Visit Verification System (EVV)	<ul style="list-style-type: none"> <li>• Describe your agency’s electronic visit verification system (EVV).</li> <li>• Describe back up plan if the EVV is unavailable.</li> <li>• Sample report from the EVV showing exact times of aide clock in and clock out.</li> </ul>	<p><b>Example 0 points-</b> No information provided.</p> <p><b>Example 1 point-</b> Does not have any type of EVV.</p> <p><b>Example 2 points-</b> Has an EVV system but does not include a backup plan when system is unavailable.</p> <p><b>Example 3 points-</b> Has an EVV system. Includes back up plan for when the system is unavailable. Proposal includes sample reports showing exact times of aide clock in and clock out.</p>	<b>0-3</b>

3. County Presence	Bidder demonstrates: <ul style="list-style-type: none"> <li>A presence in Clinton County where Bidder intends to provide services. County presence is defined as having a physical office location in a county, hiring employees who reside in a county and/or payment of payroll tax to the county.</li> </ul>	<p><b>Example 0 points-</b> No information provided.</p> <p><b>Example 1 point-</b> Bidder is not located in Ohio, Indiana, or Kentucky.</p> <p><b>Example 2 points-</b> Bidder is physically located in a neighboring county. Bidder demonstrates history of hiring employees residing in the COA geographic region and/or in a neighboring county.</p> <p><b>Example 3 points-</b> Bidder is physically located in Clinton County. Bidder demonstrates history of hiring employees residing in Clinton County.</p>	<b>0-3</b>
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### 3rd Level Evaluation: Personnel, Staffing, and Training

This level of the evaluation will be evaluated using the categories as shown below.

Number and Heading	Category	Examples for Scoring	Points
1. Onboarding and orientation for new hires  Training curriculum and continuing education for current staff  Recruitment strategy for new hires	<ul style="list-style-type: none"> <li>Provide the onboarding process and orientation given to new hires</li> <li>Provide the training curriculum used for current staff including any continuing education courses offered.</li> <li>Describe your agency's recruitment strategies to bring on new hires.</li> </ul>	<p><b>Example 0 points-</b> No information provided.</p> <p><b>Example 1 point-</b> Proposal mentions onboarding process and orientation for new hires but does not include training curriculum for continuing education courses for current staff. Does not include recruitment strategies for new hires.</p> <p><b>Example 2 points-</b> Proposal mentions onboarding process and orientation for new hires and includes training curriculum for continuing education courses for current staff. Does not include recruitment strategies for new hires.</p> <p><b>Example 3 points-</b> Proposal mentions onboarding process and orientation for new hires and includes training curriculum for continuing education courses for current staff. Includes recruitment strategies for new hires.</p>	<b>0-3</b>

<p>2. Staff call off policy</p> <p>Backup plan</p> <p>Client communication</p>	<ul style="list-style-type: none"> <li>• Provide policy for staff call offs</li> <li>• Describe your agency's backup plan in the event a staff member is unavailable to deliver services.</li> <li>• Detail the communication to the client that will take place in the event of a staff call off</li> </ul>	<p><b>Example 0 points-</b> No information provided.</p> <p><b>Example 1 point-</b> Proposal includes staff call off policy but does not include a backup plan or details of client communication in the event of a staff call off.</p> <p><b>Example 2 points-</b> Proposal includes staff call off policy and a backup plan. Does not include details of client communication in the event of a staff call off.</p> <p><b>Example 3 points-</b> Proposal includes staff call off policy, a detailed backup plan, and details of client communication in the event of a staff call off.</p>	<p><b>0-3</b></p>
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**4<sup>th</sup> Level Evaluation: Pricing**

4 <sup>th</sup> Level Evaluation: Pricing			
Number and Heading	Category	Requirements	
1. Pricing	<ul style="list-style-type: none"> <li>• Does the proposal demonstrate competitive pricing with respect to other proposals received?</li> </ul>	Price for the entire contract period based on information submitted on the Bid Rate Sheet found in Section Five (5) of this RFP.	

## **Section Seven: Required Forms & Documentation**

### **Certificate of Secretary of State**

- The bidder will provide a copy of bidder's certificate of the Secretary of State showing that it is current and in good standing.

### **Insurance and Workers' Compensation**

The bidder, at the bidder's sole expense, if awarded a contract, agrees to carry, and maintain in full force and with no interruption of coverage during the entire contract period:

1. The bidder shall furnish COA with a Certificate of Insurance (Acord 25 Form) evidencing bidder's liability insurance meets the proper requirements.
2. Comprehensive general liability 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 (COASW) 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 cancellation or non-renewal of coverage.
3. Third Party Fidelity or similar insurance covering client loss due to theft of client's property or money by any employee or volunteer of the Bidder.
4. A fidelity bond covering all individuals authorized by the Bidder to collect and/or disburse funds.
5. Professional liability insurance insuring bidder and such professionals against all claims, actions, causes, costs, and expenses relating to or arising out of the performance of services, on an occurrence basis, or claims made with appropriate tail coverage. The minimum amount of coverage shall be \$2,000,000 annual aggregate.
6. The Bidder shall have all the above-described insurance in full force and effect prior to the commencement of work. The insurance must be through a carrier licensed in the State of Ohio and reasonably acceptable to COA.
7. The insurance required under this RFP shall cover acts or omissions of both paid employees and volunteers working for the Bidder.
8. The Bidder shall require the same amount of insurance from all subcontractors utilized under this agreement.
9. Bidders must submit a current Workers' Compensation Certificate with their proposal.

## Bidder's Identifying Information Form for RFP: 002-22

### 1. IDENTIFYING INFORMATION

<b>1. Legal Name of Bidder:</b>		<b>2. Federal Tax ID #:</b>			
<b>3. Doing Business As (d.b.a.) if applicable:</b>					
<b>4. Sites doing business in this service area:</b>					
	Site #1	Site #2	Site #3	Site #4	
Admin./Director:					
Street:					
City, State, & Zip:					
Phone #:					
FAX #:					
Email address:					
<b>5. Ownership</b>		<ul style="list-style-type: none"> <li>• Private/Non-profit</li> <li>• Public/ Government</li> <li>• Publicly Traded</li> </ul>		Other _____	
<ul style="list-style-type: none"> <li>• Private</li> <li>• Charitable/Religious</li> </ul>					
<b>6. Legal Structure</b>		<ul style="list-style-type: none"> <li>• Partnership</li> <li>• Non-Profit Corporation</li> </ul>		<ul style="list-style-type: none"> <li>• Corporation</li> <li>• Voluntary Corporation</li> </ul>	
<ul style="list-style-type: none"> <li>• Sole Proprietorship</li> <li>• S Corporation</li> </ul>					

### 2. STATEMENT OF UNDERSTANDING

<p>The bidder affirms that the information contained in their proposal is true to the best of their knowledge and belief. The bidder assures that it currently provides the services for which it is bidding. The bidder also affirms that the Request for Proposal has been read and understood and Provider will be in compliance with all requirements prior to contract execution.</p>	
<b>Signature:</b>	<b>Title:</b>
<b>Printed Name:</b>	<b>Date:</b>

**BIDDER'S CERTIFICATION OF PAYMENT OF PERSONAL PROPERTY TAX**

STATE OF \_\_\_\_\_ COUNTY \_\_\_\_\_

Before me, a Notary Public, in and for said County and State, personally appeared

\_\_\_\_\_ who, being duly sworn that he/she is the owner or an officer

vested with the authority to commit said company \_\_\_\_\_

to contractual obligations and having been awarded a public contract let by competitive bid,

and that by this statement, states that at this time neither he/she nor the corporation is charged with any delinquent personal property taxes on the general tax list of personal property of any county, or that attached hereto is a list of all delinquent personal property taxes charged against him/her of the corporation.

Name of Company \_\_\_\_\_

By \_\_\_\_\_

Signature

Sworn before me and signed in my presence the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public Signature \_\_\_\_\_

This certification is in compliance with Section 5719.042 of the Ohio Revised Code which requires a certification of delinquent personal property tax by any successful bidder prior to the execution of the contract of a political subdivision; and in the event there are any due and unpaid delinquent taxes, a copy of this statement shall be transmitted to the County Treasurer within 30 days.

**DEBARMENT, SUSPENSION, INELIGIBILITY AND EXCLUSION CERTIFICATION**

I certify that the entity identified below has not been debarred, suspended, or otherwise found ineligible to receive funds by any organization of the executive branch of the federal government.

I further certify that should any notice of debarment, suspension, ineligibility, or exclusion be received by the organization, Council on Aging of Southwestern Ohio will be notified immediately.

Entity: \_\_\_\_\_

\_\_\_\_\_  
Type name of person authorized to sign

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date signed

**NON-COLLUSION AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ SS.

\_\_\_\_\_ being first duly sworn, deposes and

says that he/she is \_\_\_\_\_ of

\_\_\_\_\_  
(sole owner, partner, president, etc.)

the party making the foregoing proposal or bid; that such bid is genuine and not collusive or sham; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person to put in a sham bid, or that such other person shall refrain from bidding and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price affiant or any other bidder, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against Council on Aging of Southwestern Ohio or any person or persons interested in the proposed contract; and that all statements contained in said proposal or bid are true; and further that such bidder has not, directly or indirectly submitted this bid, or contents thereof, or divulged information relative thereto any association or to any member or agent thereof.

\_\_\_\_\_  
AFFIANT

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

## Section Eight: General Terms & Conditions

1. COA reserves the right to accept any proposal, in whole or in part, to waive any informality in any proposal, to negotiate further with one or more bidders regarding any terms of their proposals in order to achieve the best proposal for the benefit of the communities and residents COA serves as determined by COA in its sole discretion, and to reject any or all proposals, or any part or parts of any proposal, for any reason whatsoever.
2. Products and services to be purchased under this RFP are contingent upon COA funding and are in no way a guarantee to the Provider that everything described will be purchased. Any award of this contract does not give Provider the exclusive rights to products and services offered in this RFP including future offerings.
3. Bidders are responsible for compliance with all terms and conditions of this RFP and contract. As such, they are expected to read all documents issued completely.
4. COA is not liable for any errors or omissions in proposals and is not required to make corrections or amendments to errors identified in proposals. If Bidders discover any ambiguity, conflict, discrepancy, omission, or other error in this RFP, they shall immediately notify COA via [provider\\_services@help4seniors.org](mailto:provider_services@help4seniors.org) of such error in writing and request clarification or modification of the document.
5. COA reserves the right to remove any term or condition in any proposal that is not in the best interest of the communities or residents it serves as determined by COA in its sole discretion.
6. Any resulting contract will include the RFP, any addenda issued, presentation material, if requested, and the Bidder's proposal as Exhibits. The documents shall be interpreted in the following order:
  - a. Agreement
  - b. RFP and all attachments and addenda including presentation material if presentations are requested, and clarification sought by COA
  - c. Bidder's proposal
7. COA requires that all Providers be able to accept Electronic Funds Transfers (EFTs).
8. The laws of the State Of Ohio shall govern this contract and any subsequent purchases. Should there be any disagreement that requires Court action such action must take place in Hamilton County, Ohio in Cincinnati, Ohio.
9. Providers are required to be current on all employment, federal, state, and local income tax payments related to provision of the services rendered or products delivered.
10. No bid may be withdrawn after it has been deposited with COA.
11. No oral statements of any person shall, in any manner or degree, modify or otherwise affect or alter the terms of this RFP, the Contract, or any other document comprising a part or attachment to this RFP.
12. COA reserves the right to adjust rates and establish ceilings for the initial contract and each annual renewal.
13. All proposals become the property of COA and will not be returned to the Bidder. COA has the right to use all ideas contained in any proposal received at no cost to COA. Selection or rejection of a proposal will not affect this right.
14. Only information which is the nature of legitimate trade secrets or non-published financial data may be deemed proprietary. Any material within a proposal identified as such must be clearly marked "proprietary" and will be handled accordingly. Any proposal marked "proprietary" or "confidential" in its

entirety may be rejected without further consideration. Any challenge to COA withholding this information as “proprietary” or “confidential” requiring legal defense, the cost of such defense shall be borne by the Bidder.

15. COA is not responsible for any costs incurred by prospective Bidders. Costs associated with developing the proposal and any other expenses incurred in responding to this RFP are entirely the responsibility of the prospective Bidder and shall not be reimbursed by COA.
16. Bidders who are successful and awarded Contracts must agree to provide all documentation and assurances as outlined in the attached sample contract.
17. COA reserves the right to make changes in program requirements, procedures, and terms after the Bids have been submitted, opened, and reviewed, to maximize delivery of services consistent with the objectives of the program.
18. Provider must carry adequate insurance coverage to meet the specifications of this RFP provided as part of the Insurance and Workers’ Compensation section.
19. Provider must abide by the specifications set out in the Provider Requirements in an Emergency provided in Appendix A: Emergency Preparedness Plan.
20. If awarded services, the selected Bidder will enter into an Agreement substantially like the sample agreement shown in Appendix C.
21. In the event the Bidder is not awarded a contract and desires to appeal COA’s decision, the Bidder must follow the instructions provided in Appendix E: Appeals Process.
22. No identifying information protected by HIPAA shall be submitted in your proposal. Submitting HIPAA protected information, or other such protected information will be grounds for rejection of the proposal. This includes information known by, or previously reported to, COA. Bidders are reminded that bid documents are open to public scrutiny under Ohio Public Records laws.

## **APPENDIX A: Emergency Preparedness Plan**

### **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; Providing services beyond the provider's traditional territory;
  - b. 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, tabletop, and other exercises, and providing contact and other organizational information.

## **Appendix B: Computer Hardware and System Requirements**

Applicants are required to have high speed internet access (minimum DSL and/or cable modem) to enable connection via the internet to the COA provided computer software. The software currently utilized by COA for client registration and invoicing is Windows-based. Applicant's computer operating system must run Microsoft Windows 7 or above with at least the minimum recommended RAM, disk space and processor for that operating system. Recommended browser is Internet Explorer (IE).

### **Access and Security Requirements**

Users connect via the internet to the software through a security firewall to access the system. It is the Applicant's responsibility to ensure they can connect to the internet. All transmission and handling of EPHI sensitive data must comply with all requirements set forth in the BAA.

### **Printers**

Portal users will be printing from a standard web-publication therefore support for printing issues will not be offered.

### **Technical Support and Computer/Communication Problems**

Personnel are available to handle the administrative needs of the computer system, such as assigning users and passwords. We cannot provide support for the Applicant's computer equipment or connectivity to the internet. Questions regarding user ID or password problems or to obtain additional information regarding system, application, or problems please contact:

**Computer Help Desk Phone: (513) 345-3303**

**E-mail: [helpdesk@help4seniors.org](mailto:helpdesk@help4seniors.org)**

### **Account License Fees**

Additional account connections can be added but are subject to additional charges at the Provider's expense. This fee will be used to purchase additional licensing.

### **Computer Help Desk Coverage and Service**

COA will provide support Monday - Friday between the hours of 8:00 am – 5:00 pm EST. The **Computer Help Desk number is (513) 345-3303** and will be staffed during these hours. In the event your call goes to Voicemail, please leave a message and the call will be returned quickly, usually within the hour, but no longer than four (4) business hours. It is important to leave a message because the person administering the Computer Help Desk will be paged from the message. We strive to serve you with the best and most courteous customer service available. If, after contacting the Computer Help Desk, you feel a problem and concern hasn't been addressed to your satisfaction, please feel free to call the COA Manager of Innovation and Technical Services, at (513) 721-1025.

*\* In addition to the requirements above COA is requiring the winning bidder to be flexible. Providers must be able to enter notifications into the software systems COA may use. COA will provide additional information on the systems, as needed.*

**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)	

## **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 Independent Living Assistance services 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 wrongdoing. 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 wrongdoing.

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 PREPARDNESS**

### **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, tabletop, 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  
                                  4601 Malsbary Road  
                                  Blue Ash, Ohio 45242

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

## APPENDIX D: Sample Business Associate Agreement

### COUNCIL ON AGING OF SOUTHWESTERN OHIO

**WHEREAS**, pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 2024 (Aug. 21, 1996) (“HIPAA”), the Office of the Secretary of the Department of Health and Human Services has issued: (1) regulations providing Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164 (“Privacy Rule”); (2) regulations providing Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Subpart C of Part 164 (the “Security Rule”); (3) regulations requiring certain transmissions of electronic data be conducted in standardized formats at 45 CFR Subpart I of Part 162 (the “Electronic Transactions Rule”); and (4) regulations modifying the Privacy Rule, Security Rule, Enforcement and Breach Notification Rules; and

**WHEREAS**, the privacy and security provisions of HIPAA have been amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) provisions of the American Recovery and Reinvestment Act of 2009, and any and all references in this Agreement to the “HIPAA Rules” shall be deemed to include the Privacy Rule, the Security Rule, the Electronic Transaction Rule, HITECH, the Enforcement and Breach Notification Rules, and all existing and future implementing regulations, as they become effective; and

**WHEREAS**, the HIPAA Rules provide, among other things, that a Covered Entity is permitted to disclose Protected Health Information to a Business Associate and allow the Business Associate to obtain, receive, and create Protected Health Information on the Covered Entity’s behalf, only if the Covered Entity obtains satisfactory assurances in the form of a written contract, that the Business Associate will appropriately safeguard the Protected Health Information; and

**WHEREAS**, Council on Aging of Southwestern Ohio (“Covered Entity”) has engaged

\_\_\_\_\_ (“Business Associate”) to perform services pursuant to an agreement to provide service to Covered Entity, which may be described in a separate contract (the “Services Arrangement”) and Business Associate may receive Protected Health Information from Covered Entity or create and receive such information on behalf of Covered Entity in the performance of services on behalf of Covered Entity. Covered Entity and Business Associate desire to determine the terms under which they shall comply with the HIPAA Rules;

**NOW THEREFORE**, Covered Entity and Business Associate agree as follows:

#### 1. GENERAL HIPAA COMPLIANCE PROVISIONS

1.1. **HIPAA Definitions.** Except as otherwise provided in this Agreement, all capitalized terms contained in this Agreement shall have the meanings set forth in the HIPAA Rules.

1.2. **HIPAA Readiness.** Business Associate agrees that it will be fully compliant with the requirements of the HIPAA Rules by the compliance dates established under such rules to the extent necessary to enable Covered Entity to comply with their obligations under the HIPAA Rules.

1.3. **Changes in Law.** Business Associate agrees that it will comply with any changes in HIPAA Rules by the compliance date established for any such changes. If, due to such a change, either or all of the parties are no longer required to treat Protected Health Information in the manner provided for in this Agreement, the parties shall renegotiate this Agreement, subject to the requirements of Section 5. Any such renegotiation shall occur as soon as practicable following the occurrence of the change.

1.4. **Relationship.** The relationship of the Business Associate to Covered Entity is solely a contractual relationship and nothing in the Services Arrangement or this Agreement shall be interpreted as creating an agency relationship with the Business Associate under Federal common law.

## 2. OBLIGATIONS OF BUSINESS ASSOCIATE

### 2.1. Permitted Uses and Disclosures of Protected Health Information.

2.1.1. **Uses and Disclosures on Behalf of Covered Entity.** The Business Associate shall be permitted to use and disclose Protected Health Information for services Business Associate is providing to Covered Entity pursuant to the Services Arrangement, which may include but not be limited to Treatment, Payment activities and/or Health Care Operations, and as otherwise required to perform its obligations under this Agreement and the Services Arrangement.

2.1.2. **Other Permitted Uses and Disclosures.** In addition to the uses and disclosures set forth in Section 2.1.1, Business Associate may use or disclose Protected Health Information received from, or created or received on behalf of, Covered Entity under the following circumstances:

2.1.2.1. **Use of Protected Health Information for Management, Administration, and Legal Responsibilities.** Business Associate is permitted to use Protected Health Information if necessary for the proper management and administration of Business Associate or to carry out its legal responsibilities.

2.1.2.2. **Disclosure of Protected Health Information for Management, Administration, and Legal Responsibilities.** Business Associate is permitted to disclose Protected Health Information if necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, provided that the disclosure is required by law, or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person will notify Business Associate immediately of any instance of which it is aware in which the confidentiality of the Protected Health Information has been breached.

2.1.2.3. **Data Aggregation Services.** Business Associate is also permitted to use or disclose Protected Health Information to provide data aggregation services, as that term is defined by 45 CFR 164.504, relating to the health care operations of Covered Entity.

2.1.2.4. **Commercial Purposes.** Business Associate is only permitted to receive direct or

indirect remuneration for any exchange of PHI not otherwise authorized under HITECH without individual authorization, if (i) specifically required for the provision of services under the underlying Services Arrangement; (ii) for treatment purposes; (iii) providing the individual with a copy of his Protected Health Information; or (iv) otherwise determined by the Secretary in regulations.

2.1.2.5. **Further Uses Prohibited.** Except as provided in Sections 2.1.1 and Section 2.1.2, Business Associate is prohibited from further using or disclosing any information received from Covered Entity, or from any other Business Associate of Covered Entity, for any commercial purposes of Business Associate, including, for example, “data mining.” Business Associate shall not engage in any sale (as defined in HIPAA Rules) of Protected Health Information.

2.2. **Minimum Necessary.** Business Associate shall only request, use, and disclose the minimum amount of Protected Health Information necessary to accomplish the purposes of the request, use, or disclosure. Business Associate and Covered Entity acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with HITECH and the HIPAA Rules.

2.3. **Prohibited, Unlawful, or Unauthorized Use and Disclosure of Protected Health Information.** Business Associate shall not use or further disclose any Protected Health Information received from, or created or received on behalf of, Covered Entity, in a manner that would violate the requirements of the Privacy Rule if done by Covered Entity.

2.4. **Required Privacy Safeguards.** Business Associate will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity or other than as provided for in this Agreement or as required by law, including adopting policies and procedures regarding the safeguarding of Protected Health Information; and providing training to relevant employees, independent contractors, and subcontractors on such policies and procedures to prevent the improper use or disclosure of Protected Health Information. To the extent Business Associate will carry out one or more of Covered Entity’s obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rules that apply to the Covered Entity in the performance of such obligations.

2.5. **Mitigation of Improper Uses or Disclosures.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.6. **Reporting of Unauthorized Uses and Disclosures.** Business Associate shall promptly report in writing to Covered Entity any use or disclosure of Protected Health Information not provided for under this Agreement, of which Business Associate becomes aware, but in no event later than five business days of first learning of any such use or disclosure. Business Associate agrees that if any of its employees, agents, subcontractors or representatives use or disclose Protected Health Information received from, or created or received on behalf of, Covered Entity, or any derivative De-identified Information in a manner not provided for in this Agreement, Business Associate shall ensure that such employees, agents, subcontractors and representatives shall receive training on Business Associate’s procedures for compliance with the HIPAA Rules, or shall be

sanctioned or prevented from accessing any Protected Health Information Business Associate receives from, or creates or receives on behalf of, Covered Entity. Continued use of Protected Health Information in a manner contrary to the terms of this Agreement shall constitute a material breach of this Agreement.

#### 2.6.1. **Security Rule.**

2.6.2. **Security Safeguards.** Business Associate agrees to implement administrative, physical, and technical safeguards set forth in the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

2.6.3. **Security Incidents.** Business Associate agrees to report to Covered Entity any unauthorized access, use, disclosure, modification, or destruction of information or interference with information system operations which affect Electronic Protected Health Information created, received, maintained, or transmitted on behalf of Covered Entity of which Business Associate becomes aware. Business Associate agrees to also report to Covered Entity any attempted unauthorized access affecting Electronic Protected Health Information created, received, maintained, or transmitted on behalf of Covered Entity of which Business Associate becomes aware; provided that Business Associate determines that the attempted access was material and credible.

2.6.3.1. **Breach Incident Notifications.** Business Associate agrees to notify the applicable Covered Entity of any disclosure of Unsecured Protected Health Information that may constitute a Breach (a "Breach Incident") within 10 days from the date of discovery.

2.6.4. **Information About Breach Incident.** Business Associate shall provide a report to Covered Entity within 15 days of discovery of a Breach Incident except when despite all reasonable efforts by Business Associate to obtain the information required, circumstances beyond the control of the Business Associate necessitate additional time. Under such circumstances Business Associate shall provide to Covered Entity the required information as soon as possible and without unreasonable delay, but in no event later than 30 calendar days from the date of discovery of a Breach Incident. A Breach Incident will be treated as discovered in accordance with 45 CFR §164.410. The Business Associate's report shall include: (i) the date of the Breach Incident; (ii) the date of discovery of the Breach Incident; (iii) a list of each individual whose Unsecured Protected Health Information has been or is reasonably believed to have been used, accessed, acquired, or disclosed during the Breach Incident; (iv) a description of the type of Unsecured Protected Health Information involved; (v) the identity of who made the non-permitted use or disclosure and who received the non-permitted disclosure (if known); and (vi) any other details necessary to complete an assessment of the risk of harm to the affected individual.

2.6.5. **Notification to Individual and Others.** Unless otherwise agreed between Covered Entity and Business Associate, if Covered Entity determines that the disclosure of Unsecured Protected Health Information constitutes a Breach, Covered Entity shall be responsible to provide notification to individuals whose Unsecured Protected Health Information has been disclosed, as well as the Secretary of Health and Human Services and the media, as required by 45CFR 164 Subpart D. Business Associate agrees to pay actual costs for notification and of any associated mitigation incurred by Covered Entity, such as credit monitoring, if Covered Entity reasonably determines that

the Breach is significant enough to warrant such measures.

- 2.6.6. **Investigation and New Procedures.** Business Associate agrees to investigate the Breach Incident and to establish procedures to mitigate losses and protect against future Breach Incidents, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.
- 2.6.7. **Individual Requests.** Covered Entity and Business Associate acknowledge that Individuals have certain rights under the Privacy Rule to access, amend and receive an accounting of certain disclosures of their Protected Health Information. Business Associate further understands that Covered Entity has developed specific policies and procedures to be followed for Individuals who make such requests as an exercise of their rights under the Privacy Rule. A request by an Individual or such Individual's personal representative made in accordance with such policies and procedures to access, amend or receive an accounting of disclosures of the Individual's Protected Health Information is referred to herein as a "Formal HIPAA Request."
- 2.6.8. **Access to Protected Health Information.** Within 10 days of Covered Entity's request on behalf of an Individual, Business Associate agrees to make available to Covered Entity any relevant Protected Health Information in a Designated Record Set received from, or created or received on behalf of, Covered Entity in accordance with the Privacy Rule. If Business Associate receives, directly or indirectly, a request from an individual requesting Protected Health Information, Business Associate shall notify Covered Entity in writing promptly of such request no later than 5 business days of receiving such request. If Covered Entity requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by Covered Entity if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enables Covered Entity to meet its electronic access obligations under 45 CFR §164.524.
- 2.6.9. **Amendment of Protected Health Information.** Within 10 days of Covered Entity's request, Business Associate agrees to make available to Covered Entity any relevant Protected Health Information in a Designated Record Set received from, or created or received on behalf of, Covered Entity so Covered Entity may fulfill its obligations to amend such Protected Health Information pursuant to the Privacy Rule. Business Associate shall incorporate any amendments to Protected Health Information into any and all Protected Health Information Business Associate maintains. If Business Associate receives, directly or indirectly, a request from an Individual requesting Protected Health Information, Business Associate shall notify Covered Entity in writing promptly of such request no later than 5 business days of receiving such request. Covered Entity shall have full discretion to determine whether the requested amendment shall occur.
- 2.6.10. **Accounting of Disclosures.** Business Associate shall maintain, beginning as of the date Business Associate first receives Protected Health Information from Covered Entity, an

accounting of those disclosures of Protected Health Information it receives from, or creates or receives on behalf of, Covered Entity which are not excepted from disclosure accounting under the Privacy Rule. Within 10 days of Covered Entity's request, Business Associate shall make available to Covered Entity the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528. If Business Associate receives, directly or indirectly, a request from an individual requesting an accounting of disclosures of Protected Health Information, Business Associate shall notify Covered Entity in writing promptly of such request no later than 5 business days of receiving such a request. Business Associate shall provide such an accounting based on an Individual's Formal HIPAA Request to the Covered Entity. Covered Entity shall have full discretion to determine whether the requested accounting shall be provided to the requesting Individual. Business Associate will maintain the disclosure information for at least 6 years following the date of the accountable disclosure to which the disclosure information relates.

2.7. **Restrictions and Confidential Communications.** Business Associate shall, upon notice from Covered Entity in accordance with Section 3.3, accommodate any restriction to the use or disclosure of Protected Health Information and any request for confidential communications to which Covered Entity has agreed or is required to abide by in accordance with the Privacy Rule.

2.8. **Subcontractors.** Business Associate will require any of its Subcontractors to whom it provides Protected Health Information received from, or created or received on behalf of, Covered Entity to agree, in a written agreement with Business Associate, to comply with the Security Rule, and to agree to all of the same restrictions and conditions contained in this Agreement or the Privacy and Security Rules that apply to Business Associate with respect to such information. Business Associate shall not assign any of its rights or obligations under this Agreement without the prior written consent of Covered Entity. Business Associate shall provide Covered Entity for approval a copy of any agreement with any agent or subcontractor to whom Business Associate provides Protected Health Information received from, or created or received on behalf of, Covered Entity prior to its execution.

2.9. **Data Transmission.** The parties agree that Business Associate shall, on behalf of Covered Entity, transmit data for transactions that are required to be conducted in standardized format under the HIPAA Rules. Electronic Protected Health Information that is transmitted over an electronic communications network will be protected against unauthorized access to, or modification of, electronic protected health information. When electronic protected health information is transmitted from one point to another, it will be protected in a manner commensurate with the associated risk. This includes, but is not limited to, transmission through mobile devices and smart phones.

2.9.1. **Standardized Format.** Business Associate shall comply with the HIPAA Rules for all transactions conducted on behalf of Covered Entity that are required to be in standardized format.

2.10. **Subcontractors.** Business Associate shall ensure that any of its subcontractors to whom it delegates any of its duties under its contract with Covered Entity, agrees to conduct and agrees to require its agents or subcontractors to comply with the HIPAA Rules for all transactions conducted on behalf of Covered Entity that are required to be in standardized format.

### 2.10.1. **Audit.**

2.10.2. **Audit by Secretary of Health and Human Services.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity available to the Secretary of Health and Human Services upon request for purposes of determining compliance by Covered Entity with the Privacy and Security Rules.

2.10.3. **Audit by Covered Entity.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received on behalf of, Covered Entity available to Covered Entity within 14 business days of Covered Entity's request for the purposes of monitoring Business Associate's compliance with this Agreement.

2.11. **Enforcement.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules.

## 3. **OBLIGATIONS OF COVERED ENTITY**

3.1. **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

3.2. **Revocation of Permission.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by any Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures with respect to Covered Entity.

3.3. **Notice of Restrictions and Confidential Communications.** Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information and any request for confidential communications that Covered Entity has agreed to or must abide by in accordance with the HIPAA Rules.

3.4. **Permissible Requests By Covered Entity.** Except as provided in Section 2.1, Covered Entity shall not request that Business Associate use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## 4. **LIABILITY**

4.1. **Indemnification by Business Associate.** Business Associate shall be solely responsible for, and shall indemnify and hold Covered Entity harmless from any and all claims, damages, or causes of action (including the Covered Entity's reasonable attorneys' fees) arising out of the gross negligence or willful misconduct of Business Associate or Business Associate's employees, agents, and Subcontractors (or arising

out of any action by the Business Associate that is determined to have been taken as the agent of the Covered Entity under the terms of the Services Agreement or this Agreement), and Business Associate will pay all losses, costs, liabilities, and expenses agreed to in settlement of, or in compromise of, or finally awarded Covered Entity in connection with such claims or actions. Covered Entity shall notify Business Associate promptly of any action or claims threatened against or received by them and provide Business Associate with such cooperation, information, and assistance as Business Associate shall reasonably request in connection therewith. This Section 4.1 shall survive the termination of this Agreement.

4.2. **Indemnification by Covered Entity.** Covered Entity shall be solely responsible for, and shall indemnify and hold Business Associate harmless from any and all claims, damages, or causes of action arising out of the gross negligence or willful misconduct of Covered Entity or Covered Entity's employees, agents, and Subcontractors, and Covered Entity will pay all losses, costs, liabilities, and expenses agreed to in settlement of, or in compromise of, or finally awarded against the Business Associate in connection with such claims or actions. Business Associate shall notify Covered Entity promptly of any action or claims threatened against or received by Business Associate and provide Covered Entity with such cooperation, information, and assistance as Covered Entity shall reasonably request in connection therewith. This Section 4.2 shall survive the termination of this Agreement.

## 5. AMENDMENT AND TERMINATION

5.1. **Termination for Violation of Agreement.** Without limiting the rights of the parties under the Services Arrangement, Covered Entity will have the right to terminate this Agreement and the Services Arrangement if Business Associate has engaged in an activity or practice that constitutes a material breach or violation of Business Associate's obligations regarding Protected Health Information under this Agreement and, on notice of such material breach or violation from Covered Entity, fails to take reasonable and diligent steps to cure the breach or end the violation. Covered Entity will follow the notice of termination procedures (if any) applicable to the Services Arrangement. Notwithstanding the termination of this Agreement, Business Associate shall continue to comply with Section 5.2 hereof after termination of this Agreement.

5.2. **Return of Protected Health Information.** At termination of this Agreement or the Services Arrangement, whichever shall be first to occur, Business Associate shall return to Covered Entity all Protected Health Information received from, or created or received on behalf of, Covered Entity that Business Associate maintains in any form and shall retain no copies of such information. This provision shall also apply to Protected Health Information that is in the possession of any Subcontractor of Business Associate. Further, Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information. If such return is not feasible, Business Associate shall notify Covered Entity thereof and Business Associate shall destroy such Protected Health Information and/or extend the protections of this Agreement to such Protected Health Information retained by Business Associate and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

## 6. MISCELLANEOUS PROVISIONS

6.1. **Third-Party Beneficiary.** No individual or entity is intended to be a third-party beneficiary to this Agreement.

6.2. **Severability.** If any provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the HIPAA Rules, the parties shall exercise their best efforts to determine whether such provision shall be retained, replaced, or modified.

6.3. **Procedures.** The parties shall comply with procedures mutually agreed upon by the parties to facilitate the Covered Entity's compliance with the HIPAA Rules, including procedures for employee sanctions and procedures designed to mitigate the harmful effects of any improper use or disclosure of the Protected Health Information of Covered Entity.

6.4. **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Ohio, except to the extent federal law applies.

6.5. **Headings.** The headings and subheadings of the Agreement have been inserted for convenience of reference only and shall not affect the construction of the provisions of the Agreement.

6.6. **Cooperation.** The parties shall agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance by Covered Entity with the HIPAA Rules, including procedures designed to mitigate the harmful effects of any improper use or disclosure of Covered Entity's Protected Health Information.

6.7. **Notice.** All notices, requests, demands, approvals, and other communications required or permitted by this Agreement shall be in writing and sent by certified mail or by personal delivery. Such notice shall be deemed given on any date of delivery by the United States Postal Service. Any notice shall be sent to the following address (or such subsequent address provided by the applicable party):

6.7.1.1. If to Covered Entity:

Council on Aging  
Privacy Officer  
4601 Malsbary Road  
Blue Ash, Ohio 45242  
(513) 721-1025

6.7.2 If to Business Associate

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\_\_\_\_\_  
\_\_\_\_\_

6.8. **Conflict.** In the event of any conflict between the provisions of the Services Arrangement and this Agreement, the terms of this Agreement shall govern to the extent necessary to assure Covered Entity's compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the undersigned, having full authority to bind their respective principals, have executed this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Covered Entity:**

**COUNCIL ON AGING OF SOUTHWESTERN OHIO**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Business Associate:**

\_\_\_\_\_ **[BA Name]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **APPENDIX E: Appeals Process**

The Bidder shall have the right of appeal regarding actions taken by COA pertaining to this RFP per the COA Appeals Process Policy.

### **COA Appeals Process Policy**

COA funds a variety of services for older adults in Southwestern Ohio. Certain funding sources have unique requirements relative to appeals procedures, including the types of actions eligible for appeal. For those funding sources that do not otherwise have established appeals procedures, COA has established appeal protocol. The appeals procedures, by funding source, are set forth in this policy.

#### **Older Americans Act, Senior Community Services Block Grant & Alzheimer Funding**

Bidders may appeal “adverse actions” taken by COA as defined below:

- Denial of an application to provide services included in an Area Plan
- Prematurely terminating an existing provider agreement
- Not renewing a multi-year provider agreement

No other issues, actions or decisions are subject to appeal.

#### **A. Administrative Appeal**

Bidders may request a COA Local Hearing only after all efforts to administratively resolve the adverse decision have been exhausted. Any administrative efforts to resolve the adverse decision should be forward to the Manager of Procurement and Contract Services or their assigned designee.

Once all efforts to administratively resolve the decision have been exhausted a Bidder not satisfied with the outcome of the as detailed above, may then request a COA Local Hearing.

#### **B. COA Local Hearing**

The appellant must submit a written appeal request from its executive-in-charge to COA’s Chief Executive Officer to request a COA Local Hearing. The appeal request letter must be delivered via nationally recognized overnight carrier (e.g., FedEx or UPS) or by hand delivery with receipt acknowledged in writing, to COA, Attn: Chief Executive Officer, 4601 Malsbary Road, Blue Ash, Ohio 45242, and must be received by COA no later than close of business (4:00 p.m. EST) ten (10) business days after the date the appellant received notification of the adverse action which is being appealed.

1. The written appeal request must be signed by the appellant’s executive-in-charge and must include the following:
  - a. E-mail and business addresses for the executive-in-charge or his/her designee.

- b. Phone number for executive-in-charge or his/her designee.
  - c. Identification of the “adverse action” under appeal.
  - d. A detailed explanation of the basis for appellant’s appeal.
  - e. All documentation and other materials supporting the appellant’s position. Documentation and materials that were not included as part of the original application submission will not be considered by COA in the appeals process.
2. A panel of COA staff who were not directly involved in the making the adverse decision which is being appealed will convene to review appellant’s appeal request, within ten (10) business days after the close of appeal submission period. The appellant does not have a right to be present when the COA staff panel convenes.
  3. Upon determination of a decision by the panel, COA will e-mail the appellant a letter identifying the decision. This letter shall constitute COA’s final decision on the matter.
  4. COA will forward a copy of the written appeal request and the staff panel’s decision letter to the Ohio Department of Aging (“ODA”) within five (5) days after the date that COA renders its final decision.

#### **C. Ohio Department of Aging Hearing**

1. An appellant not satisfied with the outcome of the COA hearing as detailed above, may request an appeal hearing before ODA in compliance with Ohio law (see OAC 173-3-09).
2. No request for an appeal hearing shall be honored by ODA unless the appellant has first appealed the adverse action with COA and fully complied with COA’s policies governing appeal hearings, as set forth above.

#### **Elderly Services Programs – Local Senior Services Levy Funding**

Bidders dissatisfied with the outcome of the ESP evaluation process may appeal the outcome in accordance with this policy. The right of appeal is limited to a decision by COA not to award an agreement to such Bidder for all or some of the services for which the applicant applied. No other issues, actions or decisions are subject to appeal.

#### **A. Administrative Appeal**

Bidders may submit an administrative appeal to try to resolve the adverse decision. Any administrative efforts to resolve the adverse decision should be forward to the Manager of Procurement and Contract Services, or their assigned designee, in writing to [Provider\\_Services@help4seniors.org](mailto:Provider_Services@help4seniors.org) within ten (10) business days after the date the appellant received notification of the adverse decision.

Once all efforts to administratively resolve the decision have been exhausted, should a Bidder not be satisfied with the outcome of the process as detailed above, the Bidder may then request a COA Local Hearing.

## **B. COA Local Hearing**

The appellant must submit a written appeal request from its executive-in-charge to COA's Chief Executive Officer to request a COA Local Hearing. The appeal request letter must be delivered via nationally recognized overnight carrier (e.g., FedEx or UPS) or by hand delivery with receipt acknowledged in writing, to COA, Attn: Chief Executive Officer, 4601 Malsbary Road, Blue Ash, Ohio 45242, and must be received by COA no later than close of business (4:00 p.m. EST) ten (10) business days after the date the appellant received notification of the adverse action which is being appealed.

1. The written appeal request must be signed by the appellant's executive-in-charge and must include the following:
  - a. E-mail and business addresses for the executive-in-charge or his/her designee.
  - b. Phone number for executive-in-charge or his/her designee.
  - c. Identification of the "adverse action" under appeal.
  - d. A detailed explanation of the basis for appellant's appeal.
  - e. All documentation and other materials supporting the appellant's position. Documentation and materials that were not included as part of the original application submission will not be considered by COA in the appeals process.
2. A panel of COA staff who were not directly involved in making the decision which is being appealed will convene to review appellant's appeal request (a "COA Staff Hearing"), within ten (10) business days after the close of appeal submission period. The appellant does not have a right to be present at the COA Staff Hearing.
3. Upon determination of a decision by the panel, COA will e-mail the appellant a letter identifying the decision.

## **C. COA Board Hearing**

1. No request for an appeal hearing shall be honored by the COA Board of Trustees (the "Board") unless the appellant has first fully complied with the COA Staff Hearing process.
2. An appellant not satisfied with the outcome of the COA Staff Hearing as detailed above, may then request an appeal hearing before the Board.

3. The appeal request letter must be delivered via nationally recognized overnight carrier (e.g., FedEx or UPS) or by hand delivery with receipt acknowledged in writing, to COA, Attn: Chief Executive Officer, 4601 Malsbary Road, Blue Ash, Ohio 45242, and must be received by COA no later than close of business (4:00 p.m. EST) five (5) business days after the date that appellant received notification of the outcome of the COA Staff Hearing.
  - a. The appeal request must be in writing and signed by the appellant's executive-in-charge and must include:
    - i. E-mail and business addresses for the executive-in-charge or his/her designee
    - ii. Phone number for executive-in-charge or his/her designee
    - iii. Identification of the "adverse action" under appeal
4. The Finance Committee of the Board shall serve as the Appeals Committee of the Board unless otherwise approved by the Board.
5. The Appeals Committee will review the decision in dispute and will meet with the appellant if deemed necessary by the Appeals Committee, before submitting a recommendation to the Board for final action.
6. The Board, at its next regularly scheduled meeting, will review the recommendation of the Appeals Committee and adopt a final course of action. The Board may choose (but is not required) to schedule a special meeting of the Board to consider the Appeals Committee recommendation if time is of the essence. Within ten (10) business days after the meeting, the appellant will be notified of the Board's decision.
7. The decision of the Board will be final and binding. If the Board reverses the decision of the COA Staff Hearing, the Board's decision will be implemented as soon thereafter as reasonably possible. In no event will the appellant be compensated for any funds lost during the appeals process or entitled to damages of any sort.