

# **COUNTY OF BERKS**

## **Request for Proposals #21-15-KL**

### **Study of the Delivery of Health and Public Health Services in Berks County**

**Issued on November 1, 2021**

#### **Pre-Proposal Conference**

**Tuesday, November 16, 2021, 11:00 AM**

**Refer to Section 1, paragraph 1.2 for details**

#### **Submittal Deadline:**

**Tuesday, January 11, 2022 11:00 AM, Local Prevailing Time**

**Refer to Section 5, paragraph 5.1 for submittal instructions.**

#### **County's Point-of-Contact for this RFP**

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19601**

**Website: [www.countyofberks.com](http://www.countyofberks.com)**

This Request for Proposals (RFP) package consists of 71 pages including this cover page and the Table of Contents page. If the RFP package you received is missing any pages, contact the County of Berks Purchasing Department by telephone at (610) 478-6168.

## **TABLE OF CONTENTS**

### **SECTIONS**

<b>One</b>	<b>Introduction and Instructions</b>
<b>Two</b>	<b>Method of Vendor Selection</b>
<b>Three</b>	<b>Standard Contract Information</b>
<b>Four</b>	<b>Scope of Work</b>
<b>Five</b>	<b>Proposal Format and Content</b>
<b>Six</b>	<b>Evaluation Criteria and Process</b>

### **ATTACHMENTS**

<b>Attachment A</b>	<b>Proposed Form of Agreement and General Conditions</b>
<b>Attachment B</b>	<b>HIPPA Agreement</b>
<b>Attachment C</b>	<b>Non-Collusion Affidavit Form</b>
<b>Attachment D</b>	<b>Instructions - How to join a Purchasing Teams Meeting</b>

## **SECTION ONE - Introduction and Instruction**

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

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

### **1.2. Pre-Proposal Conference**

A pre-proposal conference will be held through a live broadcast using Microsoft Teams on Tuesday, November 16, 2021 beginning promptly at 11:00 AM.

The Proposers may participate in the pre-proposal meeting of this Request for Proposal through a call-in number or utilizing Microsoft Teams, refer to Attachment D for detailed instruction on how to participate in Microsoft Teams Purchasing Meeting event. The Microsoft Teams URL may be subject to change, current Microsoft Teams URL for the opening can be located and on the following site under the listing for this specific RFP:

<https://www.co.berks.pa.us/Dept/Purchasing/Pages/ITBRFP.aspx>

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

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

### **1.3. Due / Opening Dates**

The deadline for the County’s receipt of Proposals is 11:00 AM, local prevailing time, Tuesday, January 11, 2022 (“Proposal Deadline”). The County Controller’s time clock shall be considered the official time. Proposals received after the Proposal Deadline will not be considered. Refer to Section 5, paragraph 5.1 for specific Proposal submittal instructions.

Proposals will be opened publicly at 11:15 PM, on **Tuesday, January 11, 2022**. Members of the public may attend the proposal opening will be through a live broadcast using Microsoft Teams. A summary of Proposals received (Proposer name) will be posted on the Purchasing Department’s page of the County’s website

<https://www.co.berks.pa.us/Dept/Purchasing/Pages/ITBRFP.aspx>)

This Microsoft Teams URL may be subject to change, current Microsoft Teams URL for the opening can be located and on the following site under the listing for this specific RFP:

<https://www.co.berks.pa.us/Dept/Purchasing/Pages/ITBRFP.aspx>

Refer to Attachment D for detailed instruction on how to participate in the opening through a Microsoft Teams Purchasing Meeting event. *Only the name of each Proposer will be read publicly. All other information contained in each Proposal shall be treated as confidential so as to avoid disclosure of contents prejudicial to competing Proposers.*

**1.4. Amendments to Submitted, Unopened Proposals**

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

**1.5. Required Review of RFP Package**

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

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

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

**1.6. Receipt of RFP Package**

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

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

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

**1.7. Preparation Costs**

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

**1.8. Public Information**

All Proposals and other material submitted become the property of the County and may be returned only at the County's option. Information contained in the Proposals will not be disclosed during the evaluation process. Under Pennsylvania's "Right to Know" laws (65

P.S. §§ 67.101-67.3104), public records are required to be open to reasonable inspection. All Proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time the Agreement is executed by the County. Thereafter, the Proposals will become public information. Requests for photocopies of public records must be made to the Open Records Officer and will be provided to the requestor for a nominal per page fee.

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

## **1.9. Reservation of Rights**

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

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

- 1.9.1.10. To require that Proposers appear for interviews and/or presentations of their Proposals at County offices.
  - 1.9.1.11. To inspect programs similar in type and scope to the work sought in this RFP and/or to inspect the Proposer's facilities to be used in furnishing goods or services required by the RFP.
  - 1.9.1.12. To conduct such investigations as the County considers appropriate with respect to the qualifications of any Proposer and with respect to the information contained in any Proposal.
- 1.10. Any and all protests related to this solicitation are subject to the County of Berks Protest Policy which is located on the County of Berks Purchasing Department website:  
<https://www.co.berks.pa.us/Dept/Purchasing/Pages/ITBRFP.aspx>

**1.11. RFP Timeline**

Following is the County's estimated timeline for the RFP process:

Issue RFP	Monday, November 1, 2021
Pre-Proposal Conference	Tuesday, November 16, 2021
Cutoff for Submission of Written Questions	Tuesday, December 7, 2021
Deadline for Submission of Proposals	Tuesday, January 11, 2022
Opening of Submitted Proposals	Tuesday, January 11, 2022
County's Review of Proposals	January 11 – February 8, 2022
Notify Short List Firms	February 9, 2022
Interview Short List Firms	February 22-February 28, 2022
Issue Notice of Contract Award	March 25, 2022
Commencement of Work	April 4, 2022

## **SECTION 2 – Method of Vendor Selection**

### **2.1. Interviews with Short List Firms**

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

### **2.2. Right to Negotiate**

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

### **2.3. Award of Contract**

- 2.3.1.** If the County elects to award the Agreement pursuant to this RFP, it intends to award the Agreement to the responsible and responsive Proposer whose Proposal is determined to provide the best overall value to the County. The County intends to award a one-year Agreement upon the mutual agreement of the parties. The County understands that the study itself will not necessarily take one year to complete but may opt to purchase additional services from the vendor upon the completion of the study. The vendor should be prepared to begin work on April 4, 2022.
- 2.3.2.** The County reserves the right, upon notice to the Proposer, to extend the term of the Agreement for up to three (3) months upon the same terms and conditions.
- 2.3.3.** This option provision shall be within the sole and exclusive discretion of the County to exercise and shall not obligate the County to extend the Agreement.

## **SECTION 3 - Standard Contract Information**

### **3.1. Standard Agreement Provisions**

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

### **3.2. Agreement Content**

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

### **3.3. Confidentiality of Protected Health Information:**

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

## **SECTION 4 – Scope of Work**

### **4.1. Background**

4.1. Berks County is an urban area of 421,000+ persons (2019), situated in southeastern Pennsylvania. The County is a diamond-shaped area of 864 square miles. The County seat is the City of Reading with a diverse population of 88,000+. Berks County is 56 miles northwest of Philadelphia. Berks County is bordered to the north by Schuylkill County, to the west by Lebanon and Lancaster Counties, to the east by Lehigh County, and to the south by Chester and Montgomery Counties.

4.1.2 Information pertaining to County of Berks Demographics and Statistics can be found from the following site;

4.1.2.1

[https://www.co.berks.pa.us/Dept/Planning/Pages/Demographics\\_Statistics\\_Links.aspx](https://www.co.berks.pa.us/Dept/Planning/Pages/Demographics_Statistics_Links.aspx)

4.1.3 Berks County includes the City of Reading, of which the population is 69% Hispanic and Latino. The Hispanic and Latino population represent 23.2% of Berks County’s population. The Latino community within Berks County is diverse and consists of individuals from all parts of Central and South America and the Caribbean; many of them from the Dominican Republic, Mexico, and Puerto Rico.

4.1.4 Health Department - The Commonwealth of Pennsylvania does not mandate the creation of local health departments as it provides services through the Pennsylvania Department of Health to those counties such as Berks County which do not have a local health department.

4.1.5 In the Commonwealth of Pennsylvania there are six county and four municipal health departments (CMHDs). Act 315-funded health departments are required to provide public health programs in the areas of administrative and supportive services, personal health services and environmental health services. The act was amended to add support for environmental health initiatives including, but not limited to, food and water supply protection, water pollution control, public bathing place sanitation, vector control, solid waste management, and institutional, recreational, and housing environment inspection. Health Departments created under Act 315 are reimbursed on a per capital basis. The following counties and municipalities in the Commonwealth of Pennsylvania have health departments:

**4.1.5.1 County Health Departments**

[Allegheny County Health Department](#)  
[Bucks County Department of Health](#)  
[Chester County Health Department](#)  
[Erie County Department of Health](#)  
[Montgomery County Health Department](#)  
[Philadelphia Department of Public Health](#)

**4.1.5.2 Municipal Health Departments**

[Allentown Bureau of Health](#)  
[Bethlehem Health Bureau](#)  
[Wilkes-Barre City Health Department](#)  
[York City Health Bureau](#)

4.1.6 Berks County has two hospitals within its geographic border, Tower Health – Reading Hospital and Penn State Health - St. Joseph’s Hospital. As both are 501(c)(3)s they are required under the Patient Protection and Affordable Care Act (PPACA) to complete a Community Health Needs Assessment once every three years. The results of their most recent Community Health Needs Assessment and implementation strategy can be accessed and viewed utilizing the following links:

4.1.6.1 Tower Health – Reading Hospital – Completed in 2019

<https://towerhealth.org/locations/reading-hospital/about/community/community-health-needs-assessment>

4.1.6.2 Penn State Health St. Joseph’s – Completed in 2018

<https://www.pennstatehealth.org/community/community-health-needs-assessment-strategy>

Please note that Penn State Health St. Joseph’s completed a Community Health Needs Assessment in 2021 however the published findings are not yet available at the time of release for this RFP.

4.1.7 Berks Alliance Community Development conducted a community forum on October 21, 2021, titled “Community Forum: The Social Determinants of Health. The basis of which is described below and includes a link to a recorded video of the community forum.

*“Research suggests that what happens in a doctor’s office is responsible for about 20 percent of a person’s health outcomes. The rest, the major factors in determining a person’s health is driven by personal behavior and the conditions and circumstance in that person lives. These factors are more influential in shaping an individual’s health. These conditions are called the social determinants of health and include things such as access to food and health services, education and employment, environmental conditions, income, housing (including the quality of the housing) and personal relationships.*

*To improve the individual health outcomes, to enhance the wellbeing of the broader community and to control the mounting costs of medical treatment, the Pennsylvania Department of Human Services has launched a statewide initiative to address these social determinants of health. DHS manages both the Medicaid Program and the Children's Health Insurance Program (CHIP) for Pennsylvania. They have created a regional approach to this effort. Berks County is included in a Regional Health Council with twelve other counties in the Lehigh Valley and South-Central regions of the Commonwealth. This council has taken a deeper look at some of the challenges in Berks County, particularly in the city of Reading. These include sufficient access to food, an older housing stock, significant exposure to lead (largely through lead paint), access to transportation and access to broadband services and telemedicine. The incidence of diabetes, obesity, mental health issues and opioid addiction is higher in parts of our community. The leaders of this regional effort spoke about their findings and outline the strategies that could be implemented to address these issues."*

<https://www.youtube.com/watch?v=YkonYESuMdA>

or

<https://www.berksalliance.org/community-resources/video-archive/>

#### **4.2. Program Summary**

The County is seeking proposals to conduct a study of the delivery of health and public health services in the County.

#### **4.3. Program Goals and Objectives**

The study should include an outline of the current health programs and public health service structure as well as an evaluation of the extent to which these services and structure meet the current and future needs of County residents. The study should examine a broad cross section of jurisdictions with the goal of identifying a service delivery model that could be replicated by Berks County. The County desires to have a service delivery structure in place that optimizes the potential for improved health outcomes for its residents while maximizing the contribution of existing services and organizations, both public and private. The County will utilize the study information to determine the best delivery system to achieving these goals. The County has no preconceived opinions pertaining to the delivery of these services, this study should focus on identifying the structure that best meets/supports the health of County residents.

#### **4.4. Scope of Work**

**4.4.1.** The study should identify the health and public health needs in the County, including unserved and underserved populations. The study shall be based upon data specific to the County. The study shall document, take into consideration, and include a quantitative analysis of the following factors:

##### **4.4.1.1. Socioeconomic Factors (in terms of how they impact health)**

**4.4.1.1.1.** Education;

**4.4.1.1.2.** Job Status;

**4.4.1.1.3.** Family/Social Support;

**4.4.1.1.4.** Income;

**4.4.1.1.5.** Housing;

**4.4.1.1.6.** Transportation;

**4.4.1.1.7.** Community safety, including but not limited to violence and trauma; and

**4.4.1.1.8. Diversity/Culture Factors:**

4.4.1.1.8.1. Diversity in the County by addressing cultural issues and health literacy that may affect access to health and public health care as well as the delivery of that care.

4.4.1.1.8.2. Language Barriers.

**4.4.1.2. Physical Environment**

**4.4.1.2.1. Environmental Health Risks.**

**4.4.1.2.2. Food - Food Insecurity & Access to Healthy Food.**

**4.4.1.3. Health Behaviors**

**4.4.1.3.1. Tobacco Use.**

**4.4.1.3.2. Alcohol Use.**

**4.4.1.3.3. Sexual Activity.**

**4.4.1.3.4. Diet and Exercise.**

**4.4.1.4. Health Care**

**4.4.1.4.1. Access to care and quality of care.**

**4.4.1.4.2. Health insurance coverage, accessibility and legal obstacles to health care, environmental health risks.**

**4.4.1.5. Demographics/Health Status Indicators**

**4.4.1.5.1. The study shall include but not be limited to the following health status indicators:**

4.4.1.5.1.1. Population Demographics.

4.4.1.5.1.2. Maternal and child health.

4.4.1.5.1.3. Adult, child, and infant mortality rates

4.4.1.5.1.3.1. Bio-statistical and epidemiologic data pertaining to mortality that is collected by the county's Coroner's Office and/or hospital systems within the County.

4.4.1.5.1.4. Childhood immunizations coverage.

4.4.1.5.1.5. Rates of infectious disease of public health significance.

4.4.1.5.1.6. Incidence and risk factors of chronic illness.

4.4.1.5.1.7. Drug, alcohol, and tobacco related deaths, with a focus upon the opioid epidemic.

**4.4.1.6. Mental/Behavioral Health, issues related thereto.**

**4.4.1.7. Emergency Response and Preparedness (shall include all first responders).**

**4.4.1.8. Existing network of public health services.**

**4.4.1.8.1. Consider those public health services provided by the Commonwealth of Pennsylvania, municipal governments, and community health organizations.**

**4.4.1.9. The results of the most recent Community Health Needs Assessment completed as further detailed in Clause 4.1.6. The awarded vendor should be sure to utilize the most current Community Health Needs Assessment available when conducting the study.**

**4.4.1.10. Focus Groups, Public Interviews and Surveys.**

**4.4.1.10.1.** The vendor shall obtain the public's perspective regarding health and public health. The vendor shall conduct targeted interviews and/or focus groups with key constituents including government and community leaders, healthcare community leaders, health advocacy groups, and faith-based groups. There is as well interest in similar perceptions on these topics from those currently involved in the delivery of health and public health services across the County. The County is specifically interested in acquiring input from a broad representation of its population which shall include persons with a wide array of cultural, social, and economic differences.

**4.4.1.11. Study Results**

**4.4.1.11.1.** Qualitative Collection and Analysis of the above note indicators and factors.

**4.4.1.11.2.** Appraisal of current efforts to address the healthcare issues.

**4.4.1.11.3.** Thorough analysis with recommendations to enhance public health service quality and/ or efficiency such as closer coordination among health and public health sectors across the County or a modification of existing County public health structures.

**4.4.1.11.4.** Advisability, including clear pros and cons, for establishing a County based Health Department. This shall include at minimum:

4.4.1.11.4.1. Primary Goals and Objectives of the Health Department;

4.4.1.11.4.2. The costs associated with a County Health Department; and

4.4.1.11.4.3. A staffing plan upon which the costs are based.

**4.5. Qualifications / Experience**

**4.5.1. Proposing Firm**

**4.5.1.1.** The proposing firm shall at minimum:

**4.5.1.1.1.** Be an accredited institution of higher learning or have experience with three (3) projects of similar scope and size;

**4.5.1.1.2.** Have demonstrated past performance related to the ability to meet schedules and deadlines on programs of similar scope and size; and

**4.5.1.1.3.** Have demonstrated past exceptional performance related to quality for study of the delivery of health and public health services of similar scope and size.

**4.5.1.2.** It is important to note that “proposing firm” refers to the company that would enter into the Agreement with the County. To be considered, the proposing firm must meet or exceed the benchmarks set forth above on its own merit. The experience and qualifications of firms that the proposing firm will partner with in the performance of this Program cannot be used to bring a proposing firm’s less than required experience and qualifications up to the benchmark. Also, important to note is that the County is not interested in a joint venture Program but prefers to enter into the Agreement with a single entity.

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

#### **4.5.2. Program Team**

4.5.2.1. The program manager shall at minimum:

- 4.5.2.1.1. Have three years' experience study of the delivery of health and public health services, on at least three (3) projects of similar scope and size;
- 4.5.2.1.2. On past projects of similar scope and size, have demonstrated skills, technical knowledge, and administrative capability to serve all the requirements of the proposed program; and
- 4.5.2.1.3. Possess certifications, licenses, and proficiency in the application of requirements and guidelines as applicable.

4.5.2.2. The Program team shall at minimum:

- 4.5.2.2.1. Have three (3) years' experience study of the delivery of health and public health services collectively on at least three (3) projects of similar scope and size; and
- 4.5.2.2.2. On past programs of similar scope and size, have demonstrated skills, technical knowledge, and administrative capability to serve all the requirements of the proposed program specifications.

#### **4.6. Program Timeline**

The successful Proposer(s) will be required to begin the work by April 4, 2022 upon receipt of the County's issuance of the notice to proceed.

### **SECTION 5 - Proposal Format and Content**

#### **5.1. Submission of Proposal**

- 5.1.1. Proposals shall be submitted with one (1) original and four (4) copies printed on 8½" x 11" paper, and one (1) electronic copy of the Proposal and an electronic Excel file of Price Proposal on a CD or thumb drive to: County of Berks, c/o County Controller, Berks County Services Center, 633 Court Street, 12<sup>th</sup> Floor, Reading, PA, 19601. The original Proposal shall be marked "original" and each copy of the Proposal must be a complete copy of the original including all attachments and appendixes.
- 5.1.2. Proposals shall be submitted in two (2) parts – a "Technical Proposal" and "Price Proposal". The Technical Proposal shall cover the technical aspects of the Services but shall not include any mention of proposed fees or out-of-pocket expenses. The Price Proposal shall include all details as required under Section, Clause 5.12. The Technical Proposal and the Price Proposal shall be submitted in separate sealed, opaque envelopes or containers with the words "Sealed Technical Proposal – RFP #21-15-KL" and "Sealed Price Proposal – RFP #21-15-KL" clearly printed on the outside of each package. Proposals received via facsimile will not be considered.
- 5.1.3. Each Proposal section enumerated in paragraph 5.3 – 5.12 must be clearly identified and tabbed in the submitted Proposal.

**5.2. Proposal Format**

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

**5.3. Transmittal Letter**

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

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

**5.4. Understanding of the Services**

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

**5.5. Qualification Statement**

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

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

**5.5.1.2.** The number of years the Proposer has provided community health assessment services.

**5.5.1.3.** The type of organization of the Proposer (i.e. Corporation, Partnership, Sole Proprietorship).

**5.5.1.4.** The names and titles of the Proposer's principals.

- 5.5.1.5.** The Proposer's most recent annual report or the Proposer's most recent income statement, balance sheet, and statement of cash flow accompanied by an auditor's report attesting to the accuracy of these financial statements.
- 5.5.2.** The following questions should be answered thoroughly as part of the Proposal:

  - 5.5.2.1.** What is the Proposer's main business focus?
  - 5.5.2.2.** What are the strengths of the Proposer and how will the County benefit from those strengths?
- 5.5.3.** Each Proposal shall address the Proposer's qualifications for the development and completion of the Services based on the following:

  - 5.5.3.1.** List and describe the Proposer's experience relating to federal, state, or local government regarding the study of the delivery of health and public health services. For each listed project include name of the project, the entity that contracted for the project and their respective address; reference contact name; and telephone number; email address; estimated total project cost and actual total program cost; planned project completion date and actual project completion date; and summary description of the services.
  - 5.5.3.2.** Identify the program manager and submit this individual's credentials (work/program experience and education), evidencing the experience required in Section 4, Clause 4.5.2 herein. List the names and titles of your planned program team members and describe their individual levels of experience and expertise with this type of program, evidencing the experience required in Section 4, Clause 4.5.2 herein. Include an organizational chart showing the reporting structure of the team members.
  - 5.5.3.3.** Describe the Proposer's capacity to execute the Services within the proposed schedule. Describe the Proposer's willingness and ability to commit personnel to meet the scope and schedule of the Services. (Include a list of current programs and the anticipated completion dates of these programs.)
  - 5.5.3.4.** Describe, in detail, the methodology, tools and/or techniques that would be utilized to conduct a comprehensive community needs assessment. The scope of this identification will be determined in accordance with the scope of work. This description should minimally include, but not be limited to:

    - 5.5.3.4.1.** Outline a plan for reviewing demographic and other relevant data
    - 5.5.3.4.2.** A description of relevant sampling techniques that you would propose utilizing to complete this assessment.
    - 5.5.3.4.3.** Clarify types of techniques, proposed quantities, proposed timelines, target audiences, recruitment strategies to engage target audience including field practitioners, and field experts, and staffing resources to accomplish tasks.
    - 5.5.3.4.4.** Proposed methodology for clarifying the research objectives, data collection requirements and sampling strategy.
    - 5.5.3.4.5.** The level of granularity of the data.
    - 5.5.3.4.6.** A description of how data will be compiled.
    - 5.5.3.4.7.** A description of identified trends.

**5.5.3.4.8.** A description of end report that will be produced, including sample reports that your firm has produced for similar projects.

## **5.6. Conflict of Interest**

- 5.6.1.** Each Proposal shall include a conflict of interest statement indicating whether or not any principals in the Proposer, their spouse, or their child is employed by the County of Berks, and whether or not the Proposer or any individuals providing Services has a possible conflict of interest, and, if so, the nature of that conflict. Furthermore, Proposers shall complete the Non-Collusion Affidavit Form attached to this RFP as Attachment C and submit an executed copy with its Technical Proposal.
- 5.6.2.** To preserve the integrity of County employees and elected officials and to maintain public confidence in the RFP process, the County prohibits the solicitation or acceptance of anything of value by a County employee or elected official from any person seeking to initiate or maintain a business relationship with County departments, boards, commissions, and agencies.
- 5.6.3.** Proposers shall not pay any salaries, commissions, fees, or make any payments or rebates to any employee, elected official of the County or their designees. Nor shall any Proposer favor any employee, elected official of the County or their designees with gifts or entertainment of significant cost or value, or with services or goods sold at less than full market value.
- 5.6.4.** The County reserves the right to disqualify a Proposer or cancel an award of the Agreement if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the program to be performed by the Proposer. The County's determination regarding any question of conflict of interest shall be final.

## **5.7. Subcontractors**

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

**5.7.2.** A Proposer's failure to provide this information in its Proposal may cause the County to consider the Proposal non-responsive and reject the Proposal.

**5.8. Insurance**

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

**5.9. Counter Terms**

The Proposer shall specify any exceptions or objections taken to this RFP or the Proposed Form of Agreement and General Conditions, attached hereto as Attachment A, for the County to consider when evaluating the Proposal. Each provision the Proposer takes exception to shall be specifically identified (including a citation to the paragraph such provision is found) with the Proposer's suggested modification. It is understood that the Proposer takes no exception to the provisions of the RFP and form of Agreement not specifically identified as an exception or objection in this section of its Proposal.

**5.10. Project Schedule**

Proposals shall include the Proposer's planned project schedule including expected completion time periods for each task defined in Section 4 - Specifications, and an expected completion time period for the overall project.

**5.11. Alternative Proposals**

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

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

**5.12.1.** Price Proposals must include at minimum:

- 5.12.1.1.** Identification of each task/milestone and the total lump sum cost per task/milestone;
- 5.12.1.2.** The total lump sum cost for the completion of all Services for the full duration of the Agreement inclusive of out-of-pocket expenses;
- 5.12.1.3.** The total lump sum out-of-pocket expenses and a listing of the types of expenses that are included in this lump sum amount;
- 5.12.1.4.** The impact to the lump sum amount and hours worked if an alternative approach outlined in Section 5.11 of its Technical Proposal is adopted by the County when the Agreement is awarded; and
- 5.12.1.5.** The hourly rates by staff classification of those individuals that will be assigned to perform the Services. These rates will be utilized as the basis to calculate the cost for any amendments to add or remove Services during the course of the project.

**5.12.2.** The Agreement resulting from the award of this RFP will be for a fixed fee amount. The County will make payment within forty-five days of receipt of a properly prepared invoice for Services satisfactorily performed. The Proposer will submit invoices for the

tasks/milestones identified in the Price Proposal and as agreed upon by the County throughout the term of the Agreement. The Proposer may invoice upon the completion of the task/milestone, unless otherwise agreed with the form of Agreement between the County and the Proposer.

## **SECTION 6 - Evaluation Criteria and Process**

- 6.1.** A committee will review and evaluate Proposals submitted in response to this RFP (“Evaluation Committee”). The proceedings of the Evaluation Committee are confidential. Members of the Evaluation Committee are not to be contacted by the Proposers. All communication between a Proposer and the County shall be through Kelly A. Laubach, Director, Contracts & Procurement.
- 6.2.** Proposals will be evaluated against the following criteria using a pass/fail determination.
  - 6.2.1.** Financial stability of the Proposer (based on our examination of the required financial statements).
  - 6.2.2.** Compliance with the essential minimum experience and qualifications of the Proposer.
  - 6.2.3.** Compliance with the essential minimum experience and qualifications of the program team members.
  - 6.2.4.** Evidence of sufficient levels of insurance coverage.
- 6.3.** Proposals must pass this first-tier evaluation to move on to the second-tier evaluation described below.
  - 6.3.1.** Proposals will be evaluated against the following criteria using point-rated scoring:
    - 6.3.1.1.** Ability (Resource Commitment) – The Proposer’s ability to perform the required service expeditiously. The Proposer must have the resources to be capable of meeting the required program completion schedule.
    - 6.3.1.2.** Competence (Qualifications of Personnel) – The Proposer’s competence in performing the required Services as indicated by the training, education and experience of the personnel assigned to the program team. The Proposer must have in its possession all appropriate and required certifications, permits, and licenses.
    - 6.3.1.3.** Past Performance – The Proposer’s past performance on similar programs. If the County cannot verify references based on the information provided in the Proposal, the scoring for this criteria factor may be affected.
    - 6.3.1.4.** Quality and Feasibility (Technical & Organizational Approach) – The quality and feasibility of the Technical Proposal and the Proposer’s understanding of the program’s requirements and the overall goals and objectives of the program.
    - 6.3.1.5.** Proposal Content/Format – The Proposal’s compliance with the content and format requirements of the RFP.
    - 6.3.1.6.** Price.

# ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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## AGREEMENT #

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

### Background

The County desires to engage the Vendor for the provision of Guardian, Representative Payee, and Power of Attorney Services for the Berks County Area Agency on Aging in accordance with the requirements set forth in the County’s Request for Proposal #21-15-KL inclusive of all addendums (“RFP”), and Vendor’s Proposal thereto dated **Month Day, Year**, both of which are incorporated in this Agreement by reference.

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

#### **1. Definitions**

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

#### **2. Engagement**

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

#### **3. Term of Agreement**

This Agreement shall be effective **Month Day, Year** through **Month Day, Year** unless terminated in accordance with the terms and conditions of this Agreement.

#### **4. Scope of Work**

The Services shall include, without limitation, study of the delivery of health and public health services in Berks County as per RFP #21-15-KL.

#### **5. Time is of the Essence**

Time is of the essence in the performance of this Agreement. The schedule for the performance of Services is identified in RFP #21-15-KL. If the completion of Services is delayed, the County reserves the right, without liability, and in addition to its other rights and remedies, to terminate this Agreement by notice, and to procure substitute Services from another vendor. The Vendor shall reimburse the County for the costs to procure substitute Services.

**ATTACHMENT A – PROPOSED FORM OF AGREEMENT  
AND GENERAL CONDITIONS**

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**6. Fees**

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

The Agreement resulting from the award of this RFP will be for a set fee amount and shall not exceed \$\_\_\_\_ for a study of the delivery of health and public health services in Berks County, Pennsylvania. [Any and all milestones and their payments shall be incorporated into this section.]

**7. Notices and Program Manager**

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

	<i>County:</i>	<i>Vendor:</i>
Attention	County of Berks Chief Administrative Officer	
Address	633 Court Street 13th Floor, Services Center Reading, PA 19601	
Telephone	610-478-6136	
Fax	610-478-6293	
Email	<a href="mailto:rseaman@countyofberks.com">rseaman@countyofberks.com</a>	

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

**8. Invoicing / Payment**

- 8.1. **Invoices must reference the above noted Agreement number.** Original invoices shall be submitted to: County of Berks, Attn: Chief Administrative Officer, 13<sup>th</sup> Floor, Services Center, Reading, PA 19601.
- 8.2. Vendor must submit the invoice within ten (10) days of the close of the month in which Services were rendered.
- 8.3. Vendor may submit invoices no more than once per month for Services properly performed under this Agreement. No advance payments or billings are allowed. Payment by the County shall require the submittal of an itemized invoice, which shall include, but not be limited to, a description of the Services performed, the associated fee for each task, and the date(s) of performance for each task. The County shall render payment within forty-five (45) days of the County’s receipt of a properly prepared invoice. Payment shall be considered made when the County mails the check. Undisputed amounts unpaid after thirty (30) days of the County’s receipt of a properly prepared invoice shall bear interest at a rate of three percent (3%) per annum.

# ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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## 9. Insurance

- 9.1. The Vendor, at its sole expense, shall carry and maintain, in full force at all times during the term of this Agreement, the following insurance coverages:
- 9.1.1. Comprehensive General Liability insurance covering bodily injury and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
  - 9.1.2. Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000;
  - 9.1.3. Professional Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
  - 9.1.4. Umbrella/Excess Liability insurance with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate; and
  - 9.1.5. Worker's Compensation insurance in statutory limits; and Employer's Liability insurance with limits of not less than \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease-each employee.
- 9.2. Prior to the commencement of the performance of Services, Vendor shall furnish to the County a certificate of insurance evidencing all required coverage with at least the limits required herein, naming the County of Berks, its elected officials, agents, and employees as Additional Insured for "ongoing operations" and "products and completed operations" for a period of three (3) years after final payment under the Commercial General Liability Coverage. Coverage should be provided by ISO Endorsements CG20 10 07 04 and CG2037 07 04 or their equivalent. Vendor's Commercial General Liability and Umbrella/Excess Policy shall be Primary to and will not require contribution from any other insurance under which the Additional Insured is a Named Insured. To the fullest extent permitted by applicable state law, all policies shall contain a Waiver of Subrogation Clause. The County of Berks reserves the right to waive the waiver of subrogation for any and all worker's compensation policies that are provided under the State Worker's Insurance Fund (SWIF). The Certificate shall note the program and provide that no policies may be cancelled without thirty (30) days advance notice to the County. Such certificate shall be issued to: County of Berks, Attn: Contract Coordinator, 633 Court Street, 13th Floor Services Center, Reading, PA 19601. All insurance policies shall be in effect with companies holding an A.M. Best rating of "A-" or better or financial rating of IX or better with the A.M. Best's Company Key Rating, Guide Latest Edition and shall be licensed or authorized to do business in the Commonwealth of Pennsylvania. Such companies shall also be acceptable to the County. Said policies shall remain in full force and effect until the expiration of the terms of the Agreement or until completion of all duties to be performed hereunder by the Vendor, whichever shall occur later.

# ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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## **10. Precedence**

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

## **11. Availability of Appropriated Funds**

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

## **12. Taxes**

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

## **13. Ownership of Work Product**

The County, its departments, employees, agents, or assigns shall have the unrestricted right and authority to reproduce, distribute and use in whole or in part any submitted report or written materials generated by the Vendor in the performance of this Agreement. The ownership and right of control of all reports, records, and supporting documents prepared in connection with the services contemplated herein shall vest exclusively with the County and shall remain, at all times, at the Vendor's Office, with a copy sent to the County, however, that Vendor shall have such right of access to such reports, records, and supporting documentation as necessary for the provision of professional services hereunder. The Vendor shall notify the County Point of Contact for this agreement, who then shall notify other affected County Officials, anytime the Vendor receives a request for County records.

## **14. Patents, Copyrights, Trademarks**

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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### **15. Records, Audit, and Inspection**

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

### **15.2. Monitoring**

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

### **16. Warranty**

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

### **17. Indemnity**

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

### **18. Force Majeure**

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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### **19. Additional Services**

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

### **20. Termination for Convenience**

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

### **21. Termination for Cause**

- 21.1. In the event that either the Vendor or the County defaults in the performance of any obligation specified herein, the non-defaulting party shall notify the other party in writing and may suspend the Agreement, in whole or in part, pending remedy of the default. If such default is not remedied within fifteen (15) days from the date of receipt of such notice, or if the other party is diligently attempting to cure such default but is unable to cure such default within thirty (30) days from the date of receipt of such notice, then the non-defaulting party shall have the right to terminate the Agreement immediately by providing written notice of termination to the other party.
- 21.2. In the event of such notice of breach, and a failure to cure same, all finished or unfinished documents, dates of studies and reports prepared by Vendor shall at the option of the County become its property and Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents through the date of termination.
- 21.3. Notwithstanding the above, Vendor shall not be relieved of any liability to the County for damages sustained by the County by virtue of any breach of the Agreement by Vendor. The County may withhold any payments to Vendor for the purpose of set off until such time as the exact amount of damage due the County from Vendor is determined.
- 21.4. In the event that a Vendor's agreement is terminated, whether for cause or through nonrenewal, and a new Vendor is awarded the agreement, the existing Vendor must participate in a plan of transition as developed by County. This plan may include a gradual transfer of consumers to the new agency prior to the end of the existing Vendor's agreement period.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 21.5. Existing Vendors are prohibited from communicating with consumers regarding changes in Vendor agencies. County will notify all consumers in writing regarding the change in service Vendor.
- 21.6. If this Agreement is only terminated by County in part, Vendor shall continue performance of this Agreement to the extent not terminated, provided, however, that said continuation by Vendor shall take place only after County's evaluation of any and all surrounding circumstances.
- 21.7. After the effective date of any termination by County and except as otherwise stated by County, Vendor shall:
  - 21.7.1. Stop work under this Agreement to the extent specified in such termination notice.
  - 21.7.2. Place no further orders and/or agreements for materials, services and/or facilities except as may be necessary for completion of any such portion of work under this Agreement that is not subject to termination.
  - 21.7.3. Terminate any and all orders and/or contracted work to the extent that relates to the performance of any work terminated.
  - 21.7.4. Settle any and all outstanding liabilities and any and all claims arising out of any such termination of orders and/or agreements, to the extent County may require, and/or upon County's written approval of any such settlement.
  - 21.7.5. Return to County any and all funds received not expended for any services and/or materials pursuant to this Agreement.
- 21.8. The remedies set forth above shall be cumulative and shall be in addition to any and all other rights and remedies otherwise available to the County at law or in equity.
- 21.9. If, during the term of this Agreement, Vendor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or become insolvent, Vendor shall give the County written notice of such occurrence as soon as is legally permissible. If such occurrence or proposed occurrence is unacceptable to the County, the County may terminate this Agreement immediately upon written notice thereof to Vendor.
- 21.10. If the County terminates this Agreement for cause, in whole or in part, the County may acquire, correct, or replace Services similar to those terminated, by contract or otherwise, and the Vendor shall reimburse the County for any costs incurred by the County thereby, or an equitable reduction to the Vendor's compensation shall be made.

### **22. Claims for Consequential and/or Incidental Damages**

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

# ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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## **23. Release of Liens**

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

## **24. Assignment**

Vendor shall not assign this Agreement in whole or in part nor delegate any duties, without the prior written consent of the County. Such consent shall not be unreasonably withheld. Any assignment consented to by the County shall be evidenced by a written assignment agreement executed by the Vendor and its assignee in which the assignee agrees to be legally bound by all of the terms and conditions of the original Agreement and to assume the duties, obligations, and responsibilities being assigned.

## **25. Publicity**

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

## **26. Compliance with Laws**

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

## **27. Health and Safety**

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

- 27.1. comply with all federal, state, and local regulations, as well as all safety information and instructions as may be set forth in writing or otherwise provided by the County;
- 27.2. promptly report to the County all incidents with potentially adverse safety, health, or environmental implications, including slips, falls, equipment malfunctions, fume releases and any situation requiring first-aid or medical observations or treatment;
- 27.3. promptly report to the County all cases Vendor determines to be recordable on the OSHA 300 log or its equivalent and upon request, provide the County with a copy of the OSHA 300 log and all supporting forms;
- 27.4. properly maintain, inspect, and supervise its designated work area and roadways to keep them in reasonably safe condition;

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 27.5. supply the applicable Material Safety Data Sheet (MSDS) on all products supplied to the County or used on County property;
- 27.6. use, handle, store and dispose of any hazardous materials or waste while on the County's property in strict compliance with applicable laws and as instructed in the Material Safety Data Sheet(s); and

keep the County's property free of waste as the work progresses and, on completion of such activities, leave the site "broom clean" and tools, equipment and materials furnished shall be so placed and maintained as to permit unobstructed access to the work and to minimize exposure to personal injury or fire loss in a location approved by the County. The County may remove waste or store Vendor's tools, equipment, and materials if Vendor fails to properly do so and the Vendor shall reimburse the County for any costs incurred, including charges for employee time, within seven (7) days of demand.

### **28. Equal Employment Opportunity**

- 28.1. In accordance with (2 CFR § 200.326), Appendix II, the Vendor shall comply to the applicable provision in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 28.2. During the performance of the Agreement, the Vendor shall not discriminate against any employees or applicant for employment because of race, color, religion, sex, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this paragraph.
- 28.3. Vendor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age, or sex.
- 28.4. Vendor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Contracts or understanding, a notice advising said labor union or workers' representative of its commitment to this non-discrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Vendor.
- 28.5. It shall be no defense to a finding of noncompliance with this non-discrimination clause that Vendor had delegated some to its employment practices to any union, training program, or other source of recruitment that prevents it from meeting its obligations. However, if the evidence indicates that the Vendor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 28.6. Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Vendor will be unable to meet its obligations under this non-discrimination clause, Vendor shall then employ and fill vacancies through other non-discriminatory employment procedures.
- 28.7. Vendor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Vendor's noncompliance with the non-discrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Vendor may be declared temporarily ineligible for further Agreements, and other sanctions may be imposed and remedies invoked.
- 28.8. Vendor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Vendor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.
- 28.9. Vendor shall include the provisions of this non-discrimination clause in every Agreement, so that such provisions will be binding upon each subcontractor.
- 28.10. Vendor obligations under this clause are limited to the Vendor's facilities within Pennsylvania or, where the Agreement is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

### **29. Independent Contractor**

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

### **30. Employees of Vendor**

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 30.2.1. It is the policy of the County of Berks to provide a drug-free work environment. To that end the County prohibits the consumption of alcohol or illegal use, possession, sale, manufacture, dispensing, and distribution of drugs or other controlled substances while performing Services or on County property on the work site, and prohibits in the workplace the presence of an individual with such substances in the body for non-medical reasons.
- 30.2.2. Any employee of Vendor who is found in violation of the policy may be removed or barred from the work site at the discretion of the County.

### **31. Governing Law and Jurisdiction**

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

### **32. Subcontractors**

- 32.1. If subcontractors are permitted by the RFP, the Vendor shall only use such subcontractors identified in its Proposal. The substitution of one subcontractor for another may be made only with the prior written approval of the County. Such approval shall not be unreasonably withheld.
- 32.2. Notwithstanding the foregoing, the Vendor shall not subcontract with or employ any entity or individual who is currently suspended or debarred by the Commonwealth of Pennsylvania or federal government during the term of this Agreement or any extensions or renewals thereof. The County shall have the right to require the Vendor to terminate such subcontracts or employment at no cost to the County. The Vendor agrees to reimburse the County for costs and expenses incurred due to the Vendor's noncompliance with the terms of this certification requirement. For further details regarding debarment refer to Clause 46.

### **33. Severability**

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

### **34. Reservation of Rights**

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

# ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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## **35. Funds from Private Sources**

Not Applicable – Intentionally Omitted

## **36. Special Efforts in Employment**

Not Applicable – Intentionally Omitted

## **37. Regulations**

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

- 37.1. In carrying out this Agreement, the Vendor and any subcontractors shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. (Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, the Pennsylvania Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended and the Water Obstructions Act, Act of June 25, 1913, P.L. 555, as amended.)
- 37.2. Services shall be provided in compliance with 25 Pa. Code 151 et seq., relating to Environmental Health and Safety regulations for food protection, and 34 Pa. Code 50.1 et seq., relating to Fire and Panic regulations.
- 37.3. The Vendor agrees to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act, the Flood Disaster Protection Act, and the Commonwealth Motor Vehicle Procurement Act. When applicable, the Vendor agrees to comply with the provisions of the National Historic Preservation Act, Executive Order 11593 and the Archaeological and Historic Preservation Act.
- 37.4. The Vendor agrees to fully comply with the Integrity Provisions set forth below and any changes or modification made thereto.
- 37.5. The Vendor agrees to comply with the provisions of the Older Americans Act, as amended Section 312 and 321(b), Protecting Federal Reversionary Interest in Multipurpose Senior Centers.
- 37.6. The Vendor agrees to comply with the provisions of the Drug-Free Workplace Act of 1998 in 41 U.S.C. Chapter 10, s. 701, et seq.
- 37.7. The Vendor agrees to comply with and is subject to all applicable provisions of 41 U.S.C. 4172, including prohibitions on reprisal and notice to employees.
- 37.8. All claims against the County respecting any matter pertaining to this Agreement or any part thereof shall be referred to the Board of Claims (under the Act of May 20, 1937, P.L. 728, as amended).
- 37.9. The Vendor agrees to comply with 28 CFR Part 38, “Partnerships with Faith Based and Other Neighborhood Organizations.”

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 37.10. Pursuant to Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving,” 74 Fed. Reg 51225. The County encourages Vendor to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this contract and to establish workplace safety policies and conduct education, awareness and other outreach to decrease crashes cause by distracted drivers.
- 37.11. In the performance of this Agreement, Vendor shall comply with all applicable laws, ordinances, rules, and regulations of governmental authorities. Vendor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. Vendor shall give required notices, and secure and pay for any permits, licenses, and easements required for performance of services. The Vendor shall give any and all necessary formal notices required in conjunction with the lawful prosecution of the Services.
- 37.12. In accordance with 2 CRF Part 200, Section 200.318, Vendor attests to the following:
- 37.12.1. That no employee, officer, or agent of the Vendor that participates in the selection, award, or administration of this contract has a real or apparent conflict of interest. Such a conflict of interest would arise when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
  - 37.12.2. The officers, employees, and agents of the Vendor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontractors.
  - 37.12.3. The Vendor’s standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity/County.
- 37.13. In accordance with (2 CFR § 200.326), Appendix II, the Vendor shall comply to the applicable provisions as follows:
- 37.13.1. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)  

Not Applicable – Intentionally Omitted
  - 37.13.2. Copeland “Anti-Kickback” Act (40 U.S.C. 3145)  

Not Applicable – Intentionally Omitted
  - 37.13.3. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)  

Not Applicable – Intentionally Omitted

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 37.13.4. Rights to Inventions Made Under a Contract or Agreement which shall be applicable for federal funding streams that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 37.13.5. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- 37.13.5.1. Applicable for contracts and subgrants of amounts in excess of \$150,000. Vendor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 37.13.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
- 37.13.6.1. Vendors with an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 37.13.7. Procurement of Recovered Materials - §200.322
- 37.13.7.1. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

# ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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## **38. Grievance Procedure**

Not Applicable – Intentionally Omitted

## **39. Notice Required**

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

## **40. Budget Flexibility**

Not Applicable – Intentionally Omitted

## **41. Earnings of Funds**

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

## **42. Program-Budget Changes**

Not Applicable – Intentionally Omitted

## **43. Eligibility Determination**

Not Applicable – Intentionally Omitted

## **44. Claims Against the County**

Not Applicable – Intentionally Omitted

## **45. Integrity Provisions**

- 45.1. It is essential that those who seek to contract with the County observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the County procurement process.
- 45.2. In furtherance of this policy, Vendor agrees to the following:
  - 45.2.1. Vendor shall maintain the highest standards of honesty and integrity during the performance of this Agreement and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations or other requirements applicable to Vendor or that governs contracting with the County and Commonwealth.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 45.2.2. Vendor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Vendor employee activity with the County and Commonwealth; County and Commonwealth employees, and which is distributed and made known to all Vendor employees.
- 45.2.3. Vendor, its affiliates, agents and employees shall not influence, or attempt to influence any County or Commonwealth employee to breach the standards of ethical conduct for County or Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.*, or to breach any other state or federal law or regulation.
- 45.2.4. Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County and/or Commonwealth official or employee or to any other person at the direction or request of any County and/or Commonwealth official or employee.
- 45.2.5. Vendor, its affiliates, agents and employees shall not offer, give or agree or promise to give any gratuity to a County official or employee or to any other person, the acceptance of which would violate the *Governor's Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.* or any statute, regulation, statement of policy, management directive or any other published standard of the County and Commonwealth.
- 45.2.6. Vendor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any County or Commonwealth official or employee.
- 45.2.7. Vendor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the agreement, except as provided in the Agreement.
- 45.2.8. Vendor shall not have a financial interest in any other provider, subcontractor or supplier providing services, labor or material on this program, unless the financial interest is disclosed to the County in writing and the County consents to Vendor's financial interest prior to County execution of the agreement. Vendor shall disclose the financial interest to the County at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Vendor's submission of the agreement signed by Vendor.
- 45.2.9. Vendor must promptly refer to the Department of Justice Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor subcontractor or other person has, in connection with funds under this award (1) submitted a claim that violates the False Claims Act or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct. Potential fraud, waste, abuse or misconduct involving or relating to funds under this contract should be reported to the OIG by (1) mail directed to:

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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Office of the Inspector General, U.S. Department of Justice, Investigations Division  
950 Pennsylvania Avenue, N.W. Room 4706, Washington, DC 20530; (2) email to  
[oig.hotline@usdoj.gov](mailto:oig.hotline@usdoj.gov) and/or (3) the DOJ OIG hotline: at (800) 869-4499 (phone) or  
(202) 616-9881. Additional information is available from the DOJ OIG website at  
<http://www.usdoj.gov/oig>.

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

### 45.2.10. Restrictions and certifications regarding non-disclosure agreements and related matters.

45.2.10.1. Vendor shall not require any employee or contractor to sign an internal  
confidentiality agreement or statement that prohibits or otherwise restricts or  
purports to prohibit or restrict the reporting (in accordance with law) of waste,  
fraud, or abuse to an investigative or law enforcement representative of federal  
department or agency authorized to receive such information.

45.2.10.2. The foregoing is not intended, and shall not be understood by, to contravene  
requirements applicable to Standard Form 312 (which relates to classified  
information). Form 4414 (which relates to sensitive compartmental information),  
or any other form issued by a federal department or agency governing the  
nondisclosure of classified information.

### 45.2.10.3. In accepting this Agreement, the Vendor

45.2.10.3.1. represents that it neither requires nor has required internal confidentiality  
agreements or statements from employees or contractors that currently  
prohibit or otherwise currently restrict (or purport to prohibit or restrict)  
employees or contractors from reporting waste, fraud, or abuse as  
described above; and

45.2.10.3.2. certifies that if it learns or is notified that it is or has been requiring its  
employees or contractors to execute agreements or statements that prohibit  
or otherwise restrict (or purport to prohibit or restrict), reporting of waste,  
fraud, or abuse as described above, it will immediately stop any further  
obligations of award funds, will provide prompt written notification to the  
federal agency whom has awarded these grant funds and will resume (or  
permit resumption of) such obligations only if expressly authorized to do  
so by that agency.

45.2.10.4. If the Vendor does or is authorized to make subawards (“subgrants”),  
procurement contracts, or both

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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45.2.10.4.1. it represents that

45.2.10.4.1.1. it has determined that no other entity that the Vendor's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

45.2.10.4.2. it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

45.2.10.4.3. it certifies that if it learns or is notified that any subrecipient contractor or subcontractor entity that receives funds under this agreement is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, the County, will immediately stop any further obligations of agreement funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

45.2.11. Vendor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data or records provided to, or prepared by, Vendor under this agreement without the prior written approval of the County, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§67.101-3104*, or other applicable law or as otherwise provided in this Agreement. Any information, documents, reports, data, or records secured by Vendor from the County or a third party in connection with the performance of this agreement shall be kept confidential unless disclosure of such information is:

45.2.11.1. Approved in writing by the County prior to its disclosure; or

45.2.11.2. Directed by a court or other tribunal of competent jurisdiction unless the agreement requires prior County approval; or

45.2.11.3. Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or

45.2.11.4. Necessary for purposes of Vendor's internal assessment and review; or

45.2.11.5. Deemed necessary by Vendor in any action to enforce the provisions of this Agreement or to defend or prosecute claims by or against parties other than the County; or

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 45.2.11.6. Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain; or
- 45.2.11.7. Otherwise required by law.
- 45.2.12. Vendor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the County agency granting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
  - 45.2.12.1. Commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements or receiving stolen property.
  - 45.2.12.2. Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Vendor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual of entity associated with:
    - 45.2.12.2.1. Obtaining;
    - 45.2.12.2.2. Attempting to obtain; or
    - 45.2.12.2.3. Performing a public grant or subgrantVendor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval, or acquiescence.
  - 45.2.12.3. Violation of federal or state antitrust statutes.
  - 45.2.12.4. Violation of any federal or state law regulating campaign contributions.
  - 45.2.12.5. Violation of any federal or state environmental law.
  - 45.2.12.6. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
  - 45.2.12.7. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act*, 77 P.S. 1 et seq.
  - 45.2.12.8. Violation of any federal and state law prohibiting discrimination in employment, including but not limited to 28 FR Part 42.
  - 45.2.12.9. Debarment by any agency or department of the federal government or by any other state.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 45.2.17. Vendor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Vendor non-compliance with these provisions. Vendor agrees to make identified Vendor employees available for interviews at reasonable times and places. Vendor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Vendor’s integrity and compliance with these provisions. Such information may include, but shall not be limited to, Vendor’s business or financial records, documents or files of any type or form that refers to or concern this Agreement.
- 45.2.18. For violation of any of these Integrity Provisions, the County may terminate that and any other agreement with Vendor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another Vendor to complete performance under this Agreement, and debar and suspend Vendor from doing business with the County. These rights and remedies are cumulative, and the use or non-use of anyone shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.
- 45.2.19. For purposes of these Integrity Provisions, the following terms shall have the meanings found in this Clause 45.
- 45.2.19.1. “Confidential information” means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Vendor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through an act or omission of Vendor; or e) has not been independently developed by Vendor without the use of confidential information of the County or Commonwealth.
- 45.2.19.2. “Consent” means written permission signed by a duly authorized officer or employee of the County or Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or grantual terms, the County or Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
- 45.2.19.3. “Vendor” means the individual or entity that has entered into this Agreement with the County, including those directors, officers, partners, managers, and owners having more than a five percent interest in Vendor.
- 45.2.19.4. “Financial interest” means:
- 45.2.19.4.1. Ownership of more than a five percent interest in any business; or
- 45.2.19.4.2. Holding a position as an officer, director, trustee, partner, employee or holding any position of management.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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

### **46. Debarment/Tax Liabilities**

- 46.1. For the purpose of these provisions, the term vendor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, provider, or subcontractor, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant or subgrant with the County, or with a person under contract, subcontract, grant, or subgrant with the County or its state-affiliated entities, and state-related institutions. The term vendor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the County.
  - 46.1.1. The Vendor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any County contract, that neither the Vendor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Vendor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.
    - 46.1.1.1. The Vendor must also certify, in writing, that as of the date of its execution, of any County contract it has no tax liabilities or other County or Commonwealth obligations.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 46.1.1.2. The Vendor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Vendor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other County or Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
- 46.1.2. The failure of the Vendor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the County.
- 46.1.3. The Vendor agrees to reimburse the County and or Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Vendor's compliance with the terms of this or any other agreement between the Vendor and the County, which results in the suspension or debarment of the Vendor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Vendor shall not be responsible for investigative costs for investigations that do not result in the Vendor's suspension or debarment.
- 46.1.4. Vendor is required to screen their employees and contractors, both individuals and entities, to determine if they have been excluded from participation in Medicare, Medicaid, or any other federal health care program. Vendor will immediately notify County of any discovered exclusion of an employee or contractor, either an individual or entity.
- 46.1.5. All employees, vendors, contractors, service providers, and referral sources should be screened for exclusion before employing and/or contracting with them and, if hired, should be rescreened on an ongoing monthly basis to capture exclusions and reinstatements that have occurred since the last search.
- 46.1.6. Vendor will develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of more recent update; and periodically conduct self-audits to determine compliance with this requirement.
- 46.1.7. Vendor will use the following databases to determine exclusion status:
- 46.1.7.1. *Pennsylvania Medichk List*: a data base maintained by the Pennsylvania Department of Human Services ("DHS") that identifies providers, individuals, and other entities that are precluded from participation in Pennsylvania's MA Program:

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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

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

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

[https://oig.hhs.gov/exclusions/exclusions\\_list.asp](https://oig.hhs.gov/exclusions/exclusions_list.asp)

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

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

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

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

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

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

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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

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

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

46.1.7.4.4. Vendor shall copy the County on any notice given to the Bureau of Program Integrity in the manner and at the address provided for giving notices to the County in this Agreement.

46.1.7.5. Vendor shall develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of most recent update.

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

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

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

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

or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: 717-783-6472  
Fax No: 717-787-9138

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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### **47. Examination of Records**

- 47.1. Vendor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this Agreement. The foregoing constitutes "records" for the purpose of this section. Vendor agrees that a program and facilities review, including meetings with consumers, review of service records, review of service policy and procedural issuances, review of staffing rations and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at any reasonable time by State and Federal personnel and other persons duly authorized by the Area Agency. If Vendor is not a public body, Vendor agrees to maintain books, records, documents, and other evidence and accounting procedures and practices which comply with the nationally accepted Uniform Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations, as published by the National Health Council and the National Social Welfare Assembly, 1964.
- 47.2. Vendor facilities or such part thereof as may be utilized in the performance of this Agreement and Vendor's records shall be subject at all reasonable times to inspection and audit by the Commonwealth and Federal auditors and other persons duly authorized by the Area Agency.
- 47.3. Vendor agrees that until the expiration of five years after final payment under this Agreement, Federal and Commonwealth auditors and other persons duly authorized by the Area Agency shall have access to and the right to examine any records of the Vendor involving transactions related to this Agreement. Vendor may, in fulfillment of Vendor's obligation to retain Vendor's records, substitute photographs, microphotographs, or other authentic reproductions of such records after the expiration of two years following the last date of reimbursement to the Vendor.
- 47.4. Vendor agrees to collect statistical data of a fiscal nature on a regular basis and to make fiscal statistical reports at time prescribed by, and on forms furnished by the Area Agency.
- 47.5. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of four years from the date of any resulting final settlement. In addition, records which relate to litigations or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement as to which exception has been taken by the Auditors, shall be retained by the Vendor until such litigations, claims, or exceptions have been disposed of.
- 47.6. During the period of this Agreement, all information obtained by the Vendor shall be made available to the Area Agency immediately upon demand.

### **48. Progress Reports**

- 48.1. The Vendor and its subcontractors shall furnish to the County such progress and periodic reports in such form and quantity as the County may from time to time require, including but not limited to, status reports of the program, proposed budgets, invoices, copies of all contracts executed and proposed and any and all other information relative to the program as may be requested.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 48.2. In the event that the County determines that the Vendor or its subcontractors have not furnished such reports as required by the County, the County, by giving written notice to the Vendor, may suspend payments under this Agreement, until such time as the required reports are submitted.

### **49. Rights In Data: Copyrights and Disclosure**

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

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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### **50. Americans with Disabilities Act**

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

### **51. Nondiscrimination/Sexual Harassment Clause**

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

- 51.1.1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the Agreement or any contract or subcontract, the Vendor, a contractor, a subcontractor, or any person acting on behalf of the Vendor shall not, by reason of gender, race, creed or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- 51.1.2. The Vendor, contractor or any subcontractor or any person on their behalf shall not in any manner discriminate against or intimidate any of its employees on account of gender, race, creed, or color.
- 51.1.3. The Vendor, contractor or any subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- 51.1.4. The Vendor, contractor or any subcontractor shall not discriminate by reason of gender, race, creed or color against any contractor, subcontractor or supplier who is qualified to perform the work to which the agreement relates.
- 51.1.5. The Vendor, any contractor or any subcontractor shall, within the time periods requested by the County, furnish all necessary employment documents and records and permit access to their books, records and accounts by the County and the Bureau of Minority and Women Business Opportunities (BMWBO), for the purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
- 51.1.6. The Vendor, any contractor or subcontractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every contract or subcontract so that those provisions applicable to contractors or subcontractors will be binding upon each contractor or subcontractor.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 51.1.7. The County may cancel or terminate the agreement and all money due or to become due under the agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, County may proceed with debarment or suspension and may place the Vendor, contractor, or subcontractor in the Contractor Responsibility File.

### **52. Set Off Clause**

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

### **53. Property and Supplies**

Not Applicable – Intentionally Omitted

### **54. Right to Know Law**

- 54.1. The Pennsylvania Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101-3104, applies to this Agreement.
- 54.2. Unless the Vendor provides the County, in writing, with the name and contact information of another person, the County shall notify the provider using the Vendor information provided by the Vendor in this Agreement if the County needs the Vendor’s assistance in any matter arising out of the RTKL. The Vendor shall notify the County in writing of any change in the name or the contact information within a reasonable time prior to the change.
- 54.3. Upon notification to the Vendor that the County has received a request for records under the RTKL related to this Agreement that may be in the Vendor’s possession, constituting or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Vendor shall:
- 54.3.1. Provide the County, within five (5) business days after receipt of the County’s written notification, access to, and copies of, any document or information in the Vendor’s possession arising out of this Agreement that the County reasonably believes is Requested Information and may be a public record under the RTKL; and
  - 54.3.2. Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Agreement.
- 54.4. If the Vendor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or information that the Vendor considers exempt from production under the RTKL, the Vendor must notify the County and provide within five (5) business days of receiving the County’s written notification, a written statement signed by a representative of the Vendor explaining why the requested material is exempt from public disclosure under the RTKL.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 54.5. The County will rely upon the written statement from the Vendor in denying a RTKL request for the Requested Information unless the County determines that the Requested Information is clearly not protected from disclosure under the RTKL.
- 54.6. If the Vendor fails to provide the Requested Information within the time period required by these provisions, the Vendor shall indemnify and hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County.
- 54.7. The County will reimburse the Vendor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- 54.8. The Vendor may file a legal challenge to a decision by the County's decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Vendor shall indemnify the County for any legal expenses incurred by the County as a result of such a challenge and shall hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Vendor's failure, including any statutory damages assessed against the County, regardless of the outcome of such legal challenge. As between the parties, the Vendor agrees to waive all rights or remedies that may be available to it as a result of the County's disclosure of Requested Information pursuant to the RTKL.
- 54.9. The Vendor's duties relating to the RTKL are continuing duties that survive the expiration of the Agreement and shall continue as long as the Vendor has Requested Information in its possession.

### **55. Federal and State Audit Requirements**

- 55.1. Vendor must comply with all federal and state audit requirements including: the Single Audit Act, as amended, 31 U.S.C. 7501 *et seq*; 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards", as amended; and any other applicable law or regulation and any amendment to such other applicable law or regulation which may be enacted or promulgated by the state or federal government.
- 55.2. If the Vendor is a local government or non-profit organization and expends total federal awards of \$750,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have an audit made in accordance with the provisions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards".
- 55.3. If the Vendor is a for-profit organization and expends total federal awards of \$750,000 or more during its fiscal year, received either directly from the federal government or indirectly from a recipient of federal funds, Vendor is required to have a program-specific audit made in accordance with the provisions of 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" and in accordance with the laws and regulations governing the programs in which it participates.

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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- 55.4. If the Vendor expends total federal awards of less than \$750,000 during its fiscal year, it is exempt from these audit requirements but is required to maintain auditable records of federal and any state funds which supplement such awards and to provide access to such records by federal and state agencies or their designees.
- 55.5. In the event an audit is required, the Vendor is responsible for obtaining the required audit and securing the services of a certified public accountant or other independent governmental auditor. The audit shall be completed, and the report submitted to the County no later than 90 days after the close of the agreement period.
- 55.6. In the event that an audit is performed that is not mandated by applicable federal laws or regulations, Vendor shall not charge its costs of the audit to federal funding streams.
- 55.7. Vendor shall maintain adequate and sufficiently detailed records of all the services provided pursuant to this Agreement to permit an evaluation of finances and performance, which records shall be open at all reasonable times for inspection by the County, federal, state and county agencies or their authorized representatives. The County and any competent federal, state or county agency or their authorized representatives shall have the right to inspect, audit and copy Vendor's records during normal business hours. The County shall provide fourteen (14) days' notice to Vendor in the event of such an audit.
- 55.8. The County shall advise Vendor of any discrepancies in adherence to this Agreement. Vendor upon receipt of such notification hereby agrees to promptly correct any discrepancies to the satisfaction of the County.
- 55.9. Vendor shall maintain and make available such books, records and documents related to this Agreement for five (5) years from the termination of this Agreement, or until all disputes have been resolved to the satisfaction of the County or by final decision or judgment, or as otherwise required by applicable federal or state laws and regulations, whichever is greater.

### **56. Assurance of Compliance**

- 56.1. The Vendor hereby agrees that it will comply with:
- 56.1.1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Vendor receives Federal financial assistance from the County.
- 56.1.2. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulations, no otherwise qualified individual with a disability in the United States shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any

## ATTACHMENT A – PROPOSED FORM OF AGREEMENT AND GENERAL CONDITIONS

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program or activity for which the Vendor receives Federal financial assistance from the County.

56.1.3. Title IX of the Educational Amendments of 1972 (Pub. L. 92-318), as amended, and all requirements imposed by or pursuant to the Regulations of the Department of Health and Human Services (45 C.F.R. Part 86), to the end that in accordance with IX and the Regulations, no person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any educational program or activity for which the Vendor received Federal financial assistance from the County.

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

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

### **57. Vendor's Commitments**

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

### **58. Cooperation in Litigation**

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

### **59. Membership Restrictions of Facilities**

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

ATTACHMENT A – PROPOSED FORM OF AGREEMENT  
AND GENERAL CONDITIONS

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**60. Reporting of Allegations/Suspicious**

Not Applicable – Intentionally Omitted

**61. Headings**

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

**62. Entire Agreement**

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

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

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

**County of Berks**

**Vendor**

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

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

Name (printed): Kelly A. Laubach, CPPB

Name (printed): \_\_\_\_\_

Title: Director of Contracts and Procurement

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

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

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

ATTEST:

ATTEST:

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

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

Name (printed): George Rodrigues

Name (printed): \_\_\_\_\_

Title: Contract Manager

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

# ATTACHMENT B – HIPPA AGREEMENT

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## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (this “Agreement”) dated \_\_\_\_\_, 20\_\_, is by and between the **County of Berks** located at 633 Court Street, 13<sup>th</sup> Floor, Services Center, Reading, Pennsylvania 19601 (“Covered Entity”) and **Vendor Name** located at **Vendor Address** (“Business Associate”) related to the work to be performed as described below (Covered Entity and Business Associate, each a “Party” and collectively, the “Parties”).

### BACKGROUND

- I. Covered Entity has engaged Business Associate for the purpose of \_\_\_\_\_ (hereinafter, the “BA Services Contract”), in providing certain functions and activities for and on behalf of Covered Entity (the “BA Services”).
- II. Covered Entity wishes to disclose information to Business Associate pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”), including electronic protected health information (“e-PHI”) (PHI and e-PHI are, collectively, referred to hereinafter as “Covered Entity’s PHI”) in order for Business Associate to perform the BA Services.
- III. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate in connection with the BA Services Contract and pursuant to this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“Original HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”, and collectively with Original HIPAA, the “HIPAA Statute”), along with regulations promulgated by the Secretary of the Department of Health and Human Services (“HHS”) under the HIPAA Statute, including the “Privacy Rule” (45 CFR Parts 160 and 164, Subparts A and E) and the “Security Rule” (45 CFR Part 160 and 164, Subparts A and C), as amended by the “Omnibus Rule” (45 CFR Part 160, Subparts A, B, C and D and Part 164, Subparts A and C) (the Privacy Rule, the Security Rule and the Omnibus Rule, collectively the “HIPAA Rules”), as well as any other applicable laws concerning the privacy and security of health information. Hereinafter, the HIPAA Rules and the HIPAA Statute may be collectively referred to as “HIPAA”.
- IV. Under HIPAA, Covered Entity must document the required satisfactory assurances through a written agreement with Business Associate that meets the applicable requirements of HIPAA, as well as incorporate into such agreement those requirements under HITECH that relate to privacy or security and are applicable to Business Associate, and the Parties now wish to enter into the Agreement in order to comply with such requirement and to set forth more specifically each Party’s respective obligations in connection therewith.

In consideration of the mutual promises below and the exchange of information provided for herein, the Parties agree as follows:

### TERMS

- A. Incorporation of Background. The “Background” paragraphs set forth above are incorporated herein and made a part of the terms of this Agreement as if set forth herein in full.
- B. Effective Date. Except as specifically stated otherwise in this Agreement, the Effective Date shall be the date that first appears above in the introductory paragraph to this Agreement.

## ATTACHMENT B – HIPPA AGREEMENT

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- C. Definitions. Any capitalized terms not otherwise specifically defined in this Agreement shall have the meanings ascribed to them in HIPAA.
- D. Obligations of Covered Entity. Covered Entity shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Covered Entity's PHI transmitted to Business Associate pursuant to this Agreement, in accordance with the standards and requirements of HIPAA, until such PHI is received by Business Associate.
- E. Obligations of Business Associate.
- 1) Permitted Uses and Disclosures. Business Associate may use and/or disclose any and all of Covered Entity's PHI received by Business Associate from Covered Entity, or created or obtained by Business Associate on behalf of Covered Entity as follows:
- a) Purpose: Business Associate may use Covered Entity's PHI to provide or perform the BA Services, as set forth in the BA Services Contract, as permitted by and in accordance with this Agreement, HIPAA, and all other applicable federal or state laws. Business Associate may not use or disclose Covered Entity's PHI in a manner that would violate HIPAA if done by Covered Entity, this Agreement, or applicable law.
- b) Type of Information: Business Associate may use and/or disclose only the minimum necessary amount of Covered Entity's PHI needed for Business Associate to perform the BA Services in a manner consistent with Covered Entity's minimum necessary policies and procedures and any minimum necessary standards and guidance released by HHS pursuant to HIPAA.
- c) Scope of Use: Business Associate may use and further disclose Covered Entity's PHI to the extent permitted by and in accordance with this Agreement, HIPAA, or as otherwise required by law.
- d) Use for Management and Administration: Business Associate may use Covered Entity's PHI for the proper management and administration of Business Associate, if such disclosure is necessary (1) for the proper management and administration of Business Associate or (2) to carry out the legal responsibilities of Business Associate.
- e) Disclosure for Management and Administration: Business Associate may disclose Covered Entity's PHI for the proper management and administration of Business Associate if:
1. the disclosure is required by law, or
  2. Business Associate obtains from such third party a written agreement:
    - (i) that Covered Entity's PHI will be held confidentially and in compliance with HIPAA, and used or further disclosed only as required by law or for the purpose for which it was disclosed to such third party; and

## ATTACHMENT B – HIPPA AGREEMENT

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- (ii) to notify Business Associate, without unreasonable delay, of any instances of which such third party becomes aware of a Breach that compromises the confidentiality of Covered Entity's PHI.

**In no event**, however, shall Business Associate disclose Covered Entity's PHI for the foregoing purposes to any such third party not within the borders and jurisdiction of the United States of America without the prior written consent of Covered Entity, which may be withheld in Covered Entity's sole and unfettered discretion.

- f) Uses or Disclosures Requiring Prior Authorization: Business Associate agrees and understands that, except as expressly provided in this Agreement, or permitted under HIPAA, and state law, it shall not use or disclose Covered Entity's PHI to any other person or entity without first having received a HIPAA-compliant authorization. Business Associate shall retain a copy of each authorization obtained, and the information provided in response to the authorization, for six (6) years.
  - g) Nondisclosure: Business Associate shall not use or further disclose Covered Entity's PHI other than as permitted or required by this Agreement, or as otherwise required or permitted by law.
  - h) Compliance with Privacy Rule and Security Rule: To the extent Business Associate is to carry out a function or obligation of Covered Entity with respect to the Privacy Rule or Security Rule, Business Associate shall comply with the requirements of such subparts that apply to the Covered Entity in the performance of such obligation.
- 2) Business Associate's Agents. Business Associate shall ensure that any agent to whom it provides Covered Entity's PHI agrees in writing to comply with all HIPAA requirements that apply to Business Associate and with the terms and the restrictions of this Agreement with respect to such PHI, and to ensure that any subcontractor of agent agrees to such additional terms and restrictions as may be necessary to allow Business Associate to meet its obligations under this Agreement including, but not limited to, the terms and conditions set forth in Paragraph E, Section 8, hereof. In connection therewith, Business Associate agrees to indemnify, defend and hold Covered Entity harmless from and against any and all penalties, claims, fines, losses, liabilities, costs and other expenses, including court costs and reasonable attorneys' fees and disbursements, incurred as a result of, or arising directly or indirectly out of or in connection with any claims, demands, awards, judgments, actions and proceedings made by any person or organization arising out of or in any way connected with the Business Associate's agent's documentation, disclosure, use, handling, control or maintenance of Covered Entity's PHI.
- 3) Prohibited Uses and Disclosures.
- a) Prohibition on "Sale" of PHI and "Marketing". Business Associate shall not directly or indirectly accept remuneration in exchange for using or disclosing any of Covered Entity's PHI, including in de-identified form, except Business Associate may accept such remuneration from Covered Entity in exchange for

## ATTACHMENT B – HIPPA AGREEMENT

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services or functions performed pursuant to this Agreement. Business Associate shall not use or disclose Covered Entity's PHI for Marketing except for or on behalf of Covered Entity with Covered Entity's express written consent and the individual's Authorization.

- b) All Other Uses Strictly Prohibited. Business Associate is strictly prohibited from using or disclosing Covered Entity's PHI in any other manner except as expressly permitted under this Agreement, including, but not limited to, manipulating or otherwise converting such information to de-identified format, even if any such use or disclosure is otherwise permitted under HIPAA, unless Covered Entity agrees in advance in writing.

4) Security Safeguards.

- a) General. Business Associate shall have in place reasonable and appropriate safeguards to provide for the security of Covered Entity's PHI and prevent use or disclosure of Covered Entity's PHI other than as provided for by this Agreement in accordance with the Security Rule and other applicable laws, including administrative, technical and physical safeguard standards as set forth in § 164.308, § 164.310, § 164.312 of the Security Rule:

1. Compliance with Security Rule. Business Associate shall comply with the requirements of the Security Rule at all times with respect to Covered Entity's PHI.
2. Administrative and Other Safeguards. Business Associate shall implement and maintain a written security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities and as reasonably necessary for Business Associate to comply with applicable provisions of the Security Rule, including but not limited to all "Required" and "Addressable" Implementation Specifications.
3. Documentation. Business Associate shall maintain written or electronic policies and procedures developed to comply with the Security Rule. If any action, activity or assessment is required under the Security Rule to be documented, Business Associate shall maintain a written (or electronic) record of the same, and retain a copy and make it available to Covered Entity upon request for a period of six (6) years from the date of its creation, or the date when it last was in effect, whichever is later.
4. HHS Guidance. Business Associate shall implement and comply with all requirements set forth in any guidance concerning business associate's compliance with the Security Rule that may be issued by HHS pursuant to HIPAA.

- b) Security Breach Notification.

## ATTACHMENT B – HIPPA AGREEMENT

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1. General. Business Associate shall comply with the standards and requirements under the Breach Notification Laws, which for purposes of this Agreement include, collectively, the provisions relating to breach as set forth in HITECH and its related Rules for Breach Notification for Unsecured Protected Health Information (45 CFR Parts 160 and 164), as may be amended in the future, and in the Pennsylvania Breach of Personal Information Notification Act, and its related regulations, as may be amended from time to time.
2. Encryption. Business Associate shall encrypt Covered Entity's PHI when maintained by Business Associate (i.e., "at rest") and when transmitted by Business Associate (i.e., "in transit") to render it unusable, unreadable and/or indecipherable, including any and all of Covered Entity's PHI that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, transmits or discloses for or on behalf of Covered Entity pursuant to this Agreement. If the Parties otherwise mutually agree that it is not reasonable or possible for Business Associate to encrypt Covered Entity's PHI, then Business Associate shall implement reasonable alternative security methods, as agreed to by Covered Entity in its sole and unfettered discretion, to safeguard Covered Entity's PHI.
3. Business Associate's Obligations in the Event of a Security Incident or Breach.
  - (i) Reporting Security Incidents and Breaches. Business Associate shall promptly report to Covered Entity's Privacy Officer and/or Security Officer, or their respective designee, either in person or by telephone at a number to be provided by Covered Entity, any Breach or Security Incident, as such terms are defined by HIPAA, that has or may result in the unauthorized use or disclosure of Covered Entity's PHI, and in no case later than seventy-two (72) hours from the date of actual or constructive discovery by Business Associate.
  - (ii) Discovery of Breach. In accordance with 45 C.F.R. §164.402, any acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule is presumed to be a Breach. For purposes of this Agreement, a Breach shall be deemed "discovered" by Business Associate as of the first day on which such Breach is actually known to any person, other than the individual committing the Breach, that is an employee, officer, or other agent of Business Associate, or if such Breach should reasonably have been known to Business Associate to have occurred, including but not limited to notification provided to Business Associate by a subcontractor of a Breach. Business Associate shall take all commercially reasonable steps (e.g., audits; hotlines; technological tools, etc.) to allow it to discover Breaches and Security Incidents involving Covered Entity's PHI.

## ATTACHMENT B – HIPPA AGREEMENT

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- (iii) No Delay for Risk Assessment. Business Associate shall not delay Breach or Security Incident reporting to Covered Entity on the basis of there being a pending determination of whether the incident may result in a “low probability” that Covered Entity’s PHI was compromised under the Breach Notification Laws. Covered Entity has the sole and unfettered right to make any and all risk assessment determinations, and Business Associate shall cooperate with investigations if requested by Covered Entity in order for Covered Entity to comply with its obligations under HIPAA.
  
- (iv) Assistance and Cooperation. Business Associate shall provide Covered Entity with such information as may be required for Covered Entity to appropriately determine whether an incident is a Security Incident or Breach and provide such notification as may be required under the Breach Notification Laws. Business Associate agrees to assist and cooperate with Covered Entity as needed for Covered Entity and Business Associate to fully comply with the Breach Notification Laws. If Business Associate is the direct or indirect cause of a Breach of Covered Entity’s PHI, including any of Business Associate’s employees, owners, directors, managers, subcontractors, agents, independent contractors, or affiliates, Business Associate shall provide Covered Entity, at Business Associate’s sole cost, administrative support and other resources as may be requested by Covered Entity in order to furnish written notices to individuals affected by the Breach and otherwise comply with the Breach Notification Laws. In the event that Business Associate does not provide such requested assistance and resources in a timely manner, as determined by Covered Entity in its sole and unfettered discretion, then Business Associate shall reimburse Covered Entity for all reasonable and actual costs and expenses (e.g., postage; supplies; administrative staff time, etc.) incurred by Covered Entity in its efforts to comply with the Breach Notification Laws.
  
- (v) Indemnification for Failures to Discover or Report Breaches. Business Associate shall defend, indemnify and hold harmless Covered Entity and each of its owners, officers, directors, managers, employees, agents and subcontractors (“Covered Entity Affiliates”) from and against any and all penalties, claims, fines, losses, liabilities, damages, costs and expenses (including reasonable attorneys’ fees and expenses) incurred by Covered Entity or any Covered Entity Affiliates arising out of or in connection with Business Associate’s negligent failure to (a) discover a Breach, (b) timely notify Covered Entity of a Breach that is known or should have been known to Business Associate or (c) otherwise comply with Business Associate’s obligations under the Breach Notification Laws and this Agreement.

## ATTACHMENT B – HIPPA AGREEMENT

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- 5) Requested Restrictions. Business Associate acknowledges that Covered Entity is required under § 13405(a) of HITECH to comply with an individual's requested restriction regarding his or her PHI (unless the disclosure is otherwise required by law) if:
- a) the disclosure is to a health plan only for purposes of carrying out payment or health care operations (but not treatment); and
  - b) Covered Entity's PHI pertains solely to a health care item or service for which Covered Entity has been paid out-of-pocket in full by the individual or the individual's representative.

Business Associate shall comply with any such requested restriction that applies to Business Associate's further use or disclosure of Covered Entity's PHI and of which Business Associate is made aware.

- 6) Availability of Information to Covered Entity. Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, provide a copy of, and account for disclosures with respect to Covered Entity's PHI pursuant to HIPAA, including, but not limited to, 45 CFR § 164.524, and making available PHI maintained in an electronic designated record set in an electronic form and format as requested by the individual if readily producible. Nothing in this provision shall be construed to preclude or limit Business Associate's obligations under the law, specifically with respect to the provision of access to individuals of their PHI and the provision of an accounting of disclosures to individuals of their PHI.
- 7) Amendment of PHI. Business Associate shall make Covered Entity's PHI available to Covered Entity as Covered Entity may require to fulfill Covered Entity's obligations to amend Covered Entity's PHI pursuant to HIPAA, including, but not limited to, 45 CFR §164.526, and Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such PHI maintained by Business Associate. Nothing in this provision shall be construed to preclude or limit Business Associate's obligations under the law, specifically with respect to the amendment of Covered Entity's PHI by Business Associate.
- 8) Business Associate's Subcontractors.
- a) Subcontractor Agreement. Business Associate shall not transmit Covered Entity's PHI to any Subcontractor or prospective Subcontractor except as otherwise provided herein. In accordance with the Omnibus Rule, Business Associate shall enter into a written subcontractor agreement (the "Subcontractor Agreement") with any Subcontractor that creates, receives, maintains, or transmits Covered Entity's PHI on behalf of Business Associate. In the event that Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of the Subcontractor's obligation under the Subcontractor Agreement or other arrangements, Business Associate shall notify Covered Entity and take reasonable steps to cure such breach or end the violation, as applicable, to Covered Entity's satisfaction and, if such steps prove unsuccessful, terminate the

## ATTACHMENT B – HIPPA AGREEMENT

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Subcontractor Agreement or other arrangements, if feasible. A Subcontractor Agreement shall contain, among other things, the following:

1. the agreement of Subcontractor to comply as to Covered Entity's PHI with the same restrictions and conditions that apply to Business Associate under this Agreement;
  2. Subcontractor shall, in accordance with HIPAA, use and disclose only the minimum amount of Covered Entity's PHI necessary for Subcontractor to perform its services under its agreement with Business Associate;
  3. Subcontractor shall abide by all Minimum Necessary standards when using and disclosing Covered Entity's PHI;
  4. if Subcontractor is an agent of Business Associate, Subcontractor shall not transmit Covered Entity's PHI to any third party or prospective Subcontractor without the prior review or approval by Business Associate of such third party or prospective Subcontractor and/or as otherwise provided in the Subcontractor Agreement;
  5. Subcontractor shall use or disclose Covered Entity's PHI only as permitted or required by the Subcontractor Agreement or as required by law;
  6. Subcontractor shall not use or disclose Covered Entity's PHI in a manner that would violate the requirements of HIPAA or the Omnibus Rule if done by Covered Entity; and
  7. Covered Entity shall be expressly included as a third-party beneficiary to the Subcontractor Agreement and shall be afforded, without limitation, all rights and benefits associated therewith.
- b) Foreign Entities. Business Associate shall not disclose any of Covered Entity's PHI to a subcontractor not within the borders and jurisdiction of the United States of America without prior written consent of Covered Entity which may be withheld in Covered Entity's sole and unfettered discretion.
- 9) Internal Practices. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Covered Entity's PHI available to the HHS for purposes of determining Covered Entity's compliance with HIPAA.
- 10) Accounting of Disclosures. Business Associate shall maintain and make available documentation as required under § 164.528 of the Privacy Rule to allow Covered Entity to respond to an individual's request for an accounting of disclosures by Business Associate. Business Associate shall provide such information as may be necessary in order for Covered Entity to respond to an individual's request for an accounting of disclosures as required by 45 C.F.R. § 164.528, as modified by HIPAA and its implementing accounting of disclosure rules and regulations.

## ATTACHMENT B – HIPPA AGREEMENT

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- F. State Law. Business Associate shall comply with any provision or requirement concerning privacy or security of information under Pennsylvania law that is more stringent than a similar provision or requirement under HIPAA or this Agreement.
- G. Red Flags Rule. With respect to Business Associate’s access to, use or handling of information in connection with Covered Entity’s “Covered Accounts” (as defined under the Federal Trade Commission’s Red Flags Rule (the “Red Flags Rule”) and identified by Covered Entity), Business Associate shall, as of the Effective Date of this Agreement:
- 1) Implement reasonable administrative, physical, and technical policies and procedures to detect, prevent and mitigate the risk of identity theft at Business Associate;
  - 2) Cooperate with and take such steps as are reasonably necessary to assist Covered Entity with compliance with its Identity Theft Prevention Program; and
  - 3) Promptly report to Covered Entity any specific Red Flags, as identified in Covered Entity’s Red Flag policies, which Business Associate detects, and, as appropriate, respond to, or reasonably assist Covered Entity in responding to, such Red Flags in accordance with Covered Entity’s policies and procedures.
- H. Audits, Inspection and Enforcement. Covered Entity may, upon reasonable notice, inspect the facilities, systems, books, and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of any term of this Agreement and notify Covered Entity of the outcome.
- I. Termination.
- 1) Noncompliance. If either Party notifies (the “Notifying Party”) the other Party regarding an activity or practice that constitutes a material breach or violation of such other Party’s obligation under this Agreement, HIPAA or any other applicable laws concerning the privacy and security of health information (the “Breaching Party”), and such Breaching Party does not take reasonable steps to or otherwise does not successfully cure the breach or end the violation, as applicable, within a reasonable timeframe as agreed to by the Parties, the Notifying Party is permitted to the extent feasible, terminate this Agreement and the BA Services Contract. The foregoing is not intended to and does not; limit any other remedy which may be available to the Notifying Party hereunder or as a matter of law.
  - 2) Judicial or Administrative Proceedings. Either Party may terminate this Agreement and the BA Services Contract, effective immediately, if:
    - a) the other Party is named as a defendant in a criminal proceeding for a violation of HIPAA; or
    - b) a finding or stipulation that the other Party has violated any standard or requirement of HIPAA or other security or privacy law is made in any administrative or civil proceeding in which the Party has been joined.
  - 3) Effect of Termination. Upon termination of the BA Services Contract for any reason, Business Associate shall return to Covered Entity and destroy all of Covered Entity’s PHI

## ATTACHMENT B – HIPPA AGREEMENT

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that Business Associate still maintains in any form, and shall retain no copies of such PHI, or if return or destruction is not feasible, Business Associate agrees, at Covered Entity's reasonable expense, to continue to extend the protections of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

- J. Indemnification. Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all penalties, claims, fines, losses, liabilities, costs and other expenses, including court costs and reasonable attorneys' fees and disbursements, incurred as a result of, or arising directly or indirectly out of or in connection with:
- 1) any misrepresentation, breach of warranty or non-fulfillment of any undertaking by Business Associate under this Agreement; and
  - 2) any claims, demands, awards, judgments, actions, and proceedings made by any person or organization arising out of or in any way connected with Business Associate's performance under this Agreement.
- K. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or HIPAA will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- L. Amendment. The Parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and other applicable laws relating to the security or confidentiality of PHI. The Parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to the delivery of the BA Services and this Agreement. Upon either Party's request, both Parties agree to promptly enter into negotiations concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA or other applicable laws. Either Party may terminate the BA Services upon thirty (30) days' written notice in the event:
- 1) the other Party does not promptly enter into negotiations to amend this Agreement when requested by a Party pursuant to this Section; or
  - 2) the other Party does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI sufficient to satisfy the standards and requirements of HIPAA.
- M. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, the Covered Entity Affiliates and Business Associate and their respective heirs, representatives, successors and assigns, any rights, remedies, obligations or liabilities whatsoever, whether as creditor beneficiary, donor beneficiary or otherwise.

## ATTACHMENT B – HIPPA AGREEMENT

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- N. Independent Contractor. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint venturers, or any similar relationship, between the Parties hereto. Covered Entity and Business Associate acknowledge and agree that Business Associate is an independent contractor and not an agent of Covered Entity, and Business Associate shall be solely liable for the payment of all income, unemployment, workers compensation, Social Security insurance or similar taxes or assessments on the fees or other remuneration paid or to be paid to Business Associate by Covered Entity.
- O. Miscellaneous.
- 1) Entire Agreement. This Agreement supersedes all previous agreements between Covered Entity and Business Associate and contains the entire understanding and agreement between the Parties with respect to the subject matter hereof.
  - 2) Headings. The headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions.
  - 3) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without regard to conflicts of laws principles.
  - 4) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, each Party hereto and their respective successors and assigns.
  - 5) Mutual Negotiation. Each and every provision of this Agreement has been mutually negotiated, prepared and drafted and, in connection with the construction of any provisions hereof, no consideration shall be given to the issue of which Party actually prepared, drafted, requested or negotiated any provision of this Agreement, or its deletion.
  - 6) Notices. All notices, demands and other communications to be made hereunder (“Notice”) shall be given in writing and shall be deemed to have been duly given if personally delivered or sent by confirmed facsimile transmission, recognized overnight courier service which provides a receipt against delivery, or certified or registered mail, postage prepaid, return receipt requested, to the other Party at the address set forth in the first paragraph of this Agreement. Notice shall be deemed effective, if personally delivered, when delivered; if sent by confirmed facsimile transmission, when sent; if sent via overnight delivery, on the first business day after being sent, and if mailed, at midnight on the third business day after deposit in the U.S. mail.
  - 7) Modification. This Agreement may be amended, superseded, terminated, or extended, and the terms hereof may be waived, only by a written instrument signed by all of the Parties or, in the case of a waiver, signed by the Party waiving compliance.
  - 8) Preservation of Rights. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any right, power or privilege, preclude any further exercise thereof or the exercise of any

## ATTACHMENT B – HIPPA AGREEMENT

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other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any Party may otherwise have at law, in equity or otherwise.

- 9) Provisions Severable. The provisions of this Agreement are independent of and severable from each other. No provisions will be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any one or more of any of the provisions hereof may be invalid or unenforceable in whole or in part.
- 10) Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.
- 11) Interpretation. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA.
- 12) Survival. Any provision of this Agreement that, by its nature, is intended to survive the termination or expiration of this Agreement and/or the BA Services Contract shall survive the termination or expiration of this Agreement and/or the BA Services Contract, including, but not limited to, Paragraph E, Sections (1)(f), (2), (4)(b)(3), (9), and (10), Paragraph I, Section (3), and Paragraph J.

**[Signatures on the following page]**

# ATTACHMENT B – HIPPA AGREEMENT

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties hereto have duly executed this Agreement on the day and year below written:

COVERED ENTITY:

BUSINESS ASSOCIATE:

COUNTY OF BERKS

**VENDOR NAME**

By: \_\_\_\_\_  
Print Name: Kelly A. Laubach  
Title: Director of Contracts and Procurement  
Date: \_\_\_\_\_  
EIN: 23-6003049

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
EIN: \_\_\_\_\_

ATTEST:

ATTEST:

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

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

Name (printed): Candace L. Noll

Name (printed): \_\_\_\_\_

Title: Contract Manager

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

## ATTACHMENT C – NON-COLLUSION AFFIDAVIT FORM

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### INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT

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

ATTACHMENT C – NON-COLLUSION AFFIDAVIT FORM

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**NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

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

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

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

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

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

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

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

ATTACHMENT C – NON-COLLUSION AFFIDAVIT FORM

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I state that \_\_\_\_\_ understands  
(Name of Proposer)

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

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signatory

Title: \_\_\_\_\_  
President or Vice President

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_

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

My Commission Expires: \_\_\_\_\_

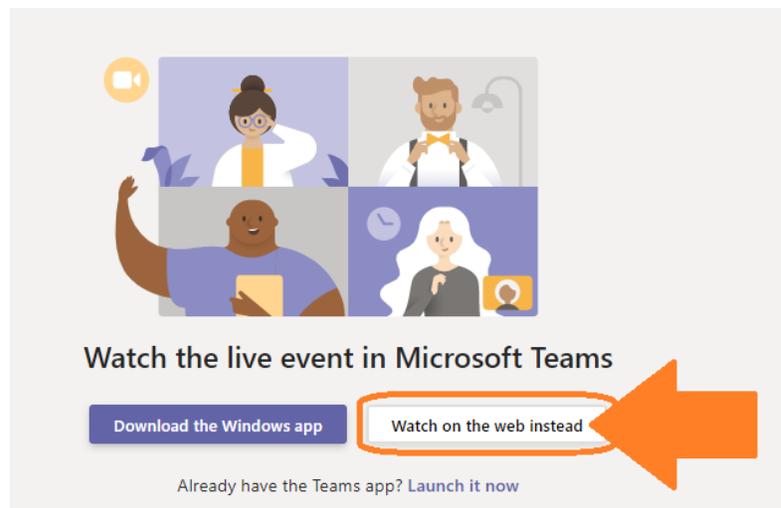
# Attachment D

## How to Join a Purchasing Teams Meeting

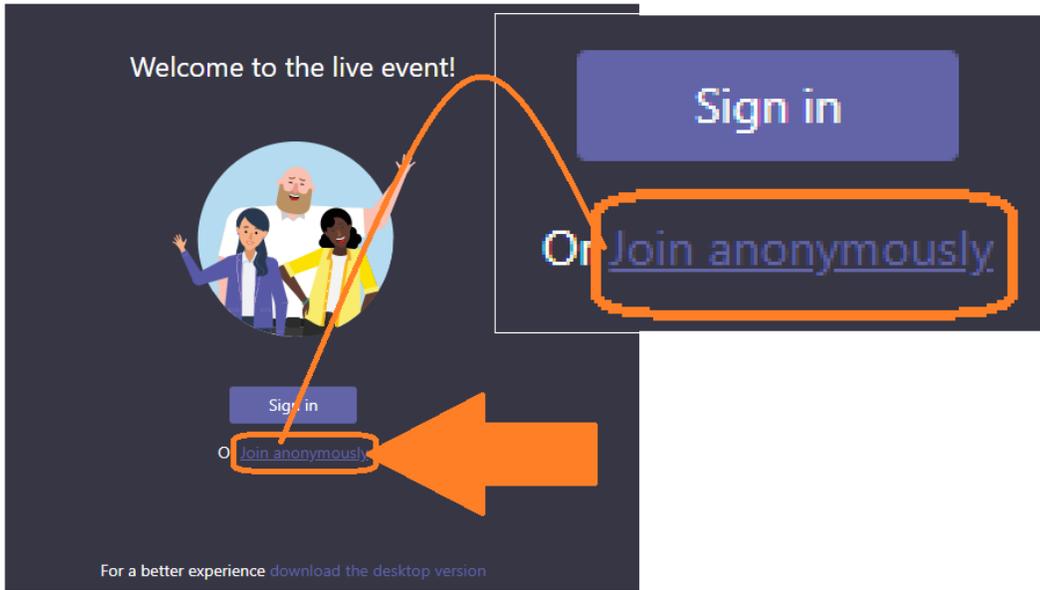
**Teams works best in Edge or Chrome. It does not work in Internet Explorer.**

### The Meeting

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



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



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

End of process