

PURCHASE OF SERVICE CONTRACT

[Vendor]

This Contract between Milwaukee County, a Wisconsin municipal body corporate (hereinafter called the “County”), represented by its Department on Health and Human Services – Area Agency on Aging (AAA), and [Vendor] (hereafter called “Contractor”), for is entered into as of [Beginning date].

The Contract consists of the following three (3) documents listed below, all of which are incorporated herein by reference, in the following order of precedence that will govern any inconsistencies between the terms of this Contract and the terms of any Exhibits, Schedules, or Attachments thereto:

- a) This Purchase of Service Contract (this document)
- b) Scope of Service Document or Service Guidelines
- c) Attachment 1 – Schedule of Services to be Purchased and Financials (POS)

1. STAFFING.

Contractor represents that its employees and subcontractors possess the necessary skill, expertise, and capability, including sufficient personnel with the necessary qualifications, to perform the services required by this Contract and meet the quality and performance expectations in the Service Guidelines. Contractor shall provide, at its own expense, all personnel required in performing the services under this Contract.

2. DATES OF PERFORMANCE.

The term of this Contract shall be from [Beginning date] through [End date], or until such time as performance is required if either party notifies the other of its termination, as provided herein.

3. COMPENSATION.

Contractor shall be compensated for work performed on Contract based upon the Proposal. The total compensation to Contractor for services performed under the Contract shall not exceed \$[Amount] unless agreed to by County in writing. State Prompt Pay Law, Section 66.285, does not apply to this Contract.

In addition, Milwaukee County Purchase of Service contracts limit allowability of costs. The Milwaukee County Department of Health and Human Services Year 2025 Purchase of Service Guidelines - Program and Technical Requirements, and Contractor’s Year 2025 application/proposal, related exhibits, and attachments, with all required submission including final approved budget are incorporated herein by reference and made a part of this Contract as if physically attached hereto and Contractor shall comply therewith. Those costs that are allowable under the federal and Wisconsin rules and regulations, but which exceed the individual budget line amounts of the approved program budget by the greater of 10% of the budget line item or 3% of the total budgeted costs are unallowable under this contract. Costs falling within a budget line item for which there are no dollars budgeted are unallowable in their entirety. In order to be compensated for costs which exceed the individual budget line amounts of the approved program budget by the greater of 10% of

the budget line item or 3% of the total budgeted costs, Contractor must submit to County a proposed amended budget along with detailed justification for the proposed budget prior to the end of the contract year to which the budget relates. Contractor will not be compensated for costs in excess of the above limitations until the proposed amended budget has been received, reviewed, and accepted in its entirety. County reserves the right to disallow budget changes proposed by Contractor in part or in its entirety. Limitations to allowable costs apply to the monthly expense submissions for those contracted services compensated on either the “cost reimbursement” or the “lower of cost incurred or units provided times unit rate” basis. Limitations on allowable costs also apply to the final accounting for program costs in the annual audit provided by the Contractor.

4. INVOICING THE COUNTY.

Contractor shall invoice Milwaukee County as stated in this Section.

The Contractor must submit invoices to the following recipient in order for Contractor's invoices to be considered received by the County:

Milwaukee County DHHS Aging and Disabilities Services
ATTN: Accounting Agent

e-mail to: Nasrin.Wertz@milwaukeecountywi.gov
c: gaylyn.reske@milwaukeecountywi.gov

Monthly Invoicing and Reporting

Monthly invoicing and reporting will include three items, all due no later than the 10th working day of the month following services.

1. Contractor will submit an invoice each month using the DHHS Purchase of Service Financial Reporting form
2. Contractor will enter data related to participants they served during the month into the State mandated data software Peer Place for federal reporting. Data to be entered in this system will include: client name, date of birth, demographics (race, gender identity, ethnicity), and contact information.
3. Contractor will submit a monthly update on contract outcomes and metrics.

5. OAA DATA ACCESS, USE, AND OWNERSHIP

1. DATA ACCESS. The Wisconsin Department of Health Services (DHS) will provide access to the Older Americans Act Peer Place data (OAA data) reporting system to an authorized representative of the Contractor who has been designated by the Contractor to report service data on its behalf. Access to this data shall be used only by authorized personnel of the Contractor. No other persons or organizations may have access to the

date contained within the Peer Place system without prior written approval from DHS, as described below.

2. USE OF DATA. The Contractor agrees to all of the following:

The Contractor will not use or further disclose data or information provided within the OAA data, other than as permitted by this contract or as otherwise required by law.

The Contractor shall not share or provide the OAA data set, in whole or in part, to any other parties, including the Contractor's agents or subcontractors, without prior written approval from DHS.

If the Contractor obtains prior written approval from DHS to share or provide any part of the OAA data set to any other parties, including agents or subcontractors, then such parties must agree to the same restrictions and conditions that apply to the Contractor for the receipt and use of the OAA data set as required under this contract.

The Contractor will report to the County and DHS any use or disclosure of the OAA data set of which it becomes aware, if that use or disclosure is not allowed and provided for by this section.

The Contractor will use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any OAA data provided under this contract. Appropriate safeguards include, but are not limited to, data storage that is physically and electronically secure, regardless of the form or media used for storing the OAA data.

Maintaining Privacy and Confidentiality of the OAA Data: County is required by state and federal law and administrative code to protect the privacy and confidentiality of the persons represented by health-related data created, received, maintained, used, or disclosed by County or DHS.

These statutes and administrative rules regarding the privacy or confidentiality of health information include, but are not limited to:

- Federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 CFR Parts 160 and 164;
- Federal Confidentiality of Alcohol and Drug Abuse Patient Records rule, 42 CFR Part 2;
- State confidentiality protections regarding past or present applicants and recipients of Wisconsin Medicaid, per Wis. Stats., sec. 49.45 (4) and Wis. Admin. Code sec. DHS 108.01;

- State confidentiality protections regarding persons who are now receiving or have at any time received services for developmental disabilities, mental illness, alcoholism, or drug dependence or abuse, per Wis. Stats., sec. 51.30 and Wis. Admin. Code chapter DHS 92;

The Contractor will not change the definition, data condition, or use of any data element or segment in any part of the OAA data set.

C. OWNERSHIP OF DATA.

Upon completion of the work or upon termination of the Contract, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractor has collected or prepared in carrying out this Contract shall be provided to and become property of the County.

Unauthorized use or disclosure of confidential information shared by programming participants may cause harm to that person, and to the reputation of Milwaukee County and the State of Wisconsin. Damages assessed by the State of Wisconsin will be passed through to the vendor responsible for any breach of data, for each individual whose confidential information was used or disclosed.

No reports, documents, or software produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

6. COUNTY RIGHTS OF ACCESS AND AUDIT.

The Contractor, Lessee, or other party to the Agreement, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as “Designated Personnel”) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the Agreement, related to the terms and performance of the Agreement for a period of up to six years following the date of last payment, the end date of this Agreement, or activity under this Agreement, whichever is later. Any subcontractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the Agreement, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of Ordinances (“MCCO”).

Unless waived by County, Contractor shall submit, on or before **June 30, 2025**, or such later date that is mutually acceptable to Contractor and County, two (2) original copies of a certified financial and compliance audit for calendar year 2024 performed by an independent certified public accountant (CPA) licensed to practice by the State of

Wisconsin. CPA audit reports are required under section [46.036 \(4\) \(c\) Wisconsin Statutes](#). Requests for waiver and/or extension must be in writing and submitted before the original due date of the audit. A company certified audit for this contract is acceptable. Contractor's audit report shall comply with the following conditions and requirements:

Non-profit Contractors who received aggregate federal financial assistance of \$500,000 or more, either directly or indirectly, shall submit to County two (2) original copies of a certified audit for calendar year 2024 performed in accordance with the Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments and Non-Profit Organizations. The audit submitted by Contractor shall be conducted in conformance with the following standards:

- (a) Wisconsin Department of Health Services, DHS Audit Guide, 2018 Revision (or most recent);
- (b) Standards applicable to financial audits contained in Government Auditing Standards (GAS) promulgated by the Comptroller General of the United States; and
- (c) Generally Accepted Auditing Standards (GAAS) adopted by the American Institute of Certified Public Accountants (AICPA).

Contractor shall also submit to County, on or before June 30, 2025 a statement acknowledging that Contractor received aggregate federal funding of \$500,000 or more for calendar year 2024.

For-profit Contractors who received \$25,000 or more of aggregate federal financial assistance, either directly or indirectly, and non-profit Contractors who received \$25,000 or more of aggregate federal financial assistance, either directly or indirectly, but less than \$500,000 of aggregate federal financial assistance, either directly or indirectly, for calendar year 2024, shall submit to County, two (2) original copies of a certified audit for calendar year 2024 conducted in accordance with the following standards:

- (d) Wisconsin Department of Health Services, DHS Audit Guide, 2018 Revision (or most recent)
- (e) Standards applicable to financial audits contained in Government Auditing Standards (GAS) promulgated by the Comptroller General of the United States; and
- (f) Generally Accepted Auditing Standards (GAAS) adopted by the American Institute of Certified Public Accountants (AICPA).

Contractor shall also submit to County, on or before June 30, 2025, a statement acknowledging that Contractor did not receive aggregate federal funding of \$500,000 or more for calendar year 2024.

Regardless of status or format, all CPA audits and reports referenced above shall contain the following Financial Statements, Schedules, and Auditor's Reports:

(1) Financial Statements for the Entire Organization:

- a. Comparative Balance Sheet for Total Agency.
- b. Comparative Statement of Operations for Total Agency.
- c. Statement of Changes in Financial Position or Statement of Cash Flows for Total Agency.
- d. Supplemental schedule of program revenues and expenses identified by funding source for each program or service referenced in Exhibit I, including non-federal matching share, if required, and client contributions.
- e. Notes to financial statements, including units of service, if applicable, provided by contract (if not disclosed on the face of the financial statements), and disclosure of related party transactions, if any, and the source of the non-federal matching share, if such matching share is required.

(2) Auditor's Reports:

- a. Report on the financial position, results of operations, and changes in the financial position or Statement of Cash Flows for the entire agency.
- b. Report on Compliance, including compliance with applicable laws and regulations, and any subsequent revisions, and compliance with material financial terms and conditions of this Contract, including allowance of program costs.
- c. Report on Evaluation of Internal Accounting Controls. A copy of any management letter or equivalent document issued in conjunction with the audit shall be provided to County.
- d. Findings of non-compliance.
- e. Schedule of questioned costs and the potential amount of repayment prior to offsetting any unrelated items.
- f. Schedule of Federal and State Awards broken down by contract year. The schedule shall identify the contract number and the program name from

Exhibit I of the contract. Each care or service under County Contract must be reported as a separate item by contract year.

- g. A report on the status of action(s) taken on prior audit findings.

7. ANTI-LOBBYING ACT

Contractor shall certify to County 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. Contractor shall also disclose any lobbying with non- federal funds that takes place in connection with obtaining any federal award.

Contractor shall use Standard Form LLL for Disclosure of Lobbying Activities available at: <https://www.gsa.gov/portal/forms/download/116430>. A completed disclosure must be provided upon County request.

8. TARGETED BUSINESS ENTERPRISES.

If applicable, contractor shall comply with all provisions imposed by or pursuant to Milwaukee County Code of General Ordinances Chapter 42 and as said Ordinance may be amended. The County shall notify Contractor in the event that new ordinances are issued. Contractor shall submit monthly reports online as required by the County for the purpose of demonstrating compliance with this Section at the County's B2Gnow Portal <https://mke.diversitycompliance.com/Default.asp>

9. CIVIL RIGHTS COMPLIANCE, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS.

Civil Rights Compliance

All contractors must comply with DHS's Affirmative Action/Civil Rights Compliance requirements at: <https://www.dhs.wisconsin.gov/civil-rights/index.htm>, including with the nondiscrimination and affirmative action provisions under Wisconsin's Contract Compliance Law, Wis. Stat. § 16.765 and Wis. Admin. Code Ch. Adm. 50.

The Contractor further assures that it will undertake an affirmative action program as required by Milwaukee County Code of General Ordinances (MCCGO) 56.17(1d) to insure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCGO 56.17(1d).

The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart.

The Contractor assures that it will require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCGO 56.17(1d), to the same effect.

In accordance with the provisions of Section 1557 of the Patient Protection and Affordable Care Act of 2010 (42 U.S.C. § 18116), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), and regulations implementing these Acts, found at 45 C.F.R. Parts 80, 84, and 91 and 92, the Grantee shall not exclude, deny benefits to, or otherwise discriminate against any person on the basis of sex, race, color, national origin, disability, or age in admission to, participation in, in aid of, or in receipt of services and benefits under any of its programs and activities, and in staff and employee assignments to patients, whether carried out by the Grantee directly or through a Sub-contractor or any other entity with which the Grantee arranges to carry out its programs and activities.

In accordance with the provisions of Section 11 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2020), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and the regulations implementing these Acts, found at 7 C.F.R. Parts 15, 15a, and 15b, and Part 16, 28 C.F.R. Part 35, and 45 C.F.R. Part 91, the Grantee shall not discriminate based on race, color, national origin, sex, religious creed, disability, age, or political beliefs or engage in reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by the United States Department of Agriculture.

In addition to these Federal civil rights laws, other laws may apply to specific federal or state programs, and the Contractor must comply with all applicable federal or state civil rights laws. Civil rights laws may be created or amended during the time of this contract. Contractor agrees to comply with all current laws throughout the contract period.

The Contractor must provide to the County a Civil Rights Compliance Letter of Assurance (CRC LOA) that obligates the entity to comply with Federal civil rights provisions in service delivery within fifteen (15) days of the effective date of this contract. Contractor must provide updates of any changes to the entity's address or change in the authorized representative listed in the CRC LOA to the County within ten (10) working days of the change. The Contractor must name an employee to serve as their Civil Rights Compliance officer.

Contractors with fifty (50) or more employees and who receive an aggregate of more than \$50,000 in Federal funding through one or more contracts must complete and keep on file a Civil Rights Compliance (CRC) Plan. The Contractor must produce its CRC Plan upon request by the County or by the appropriate State Agency. Contractor must complete the CRC Plan within 60 calendar days of the effective date of this contract. The Civil Rights Compliance Requirements, including the template and instructions, for the CRC Plan can be found at <https://www.dhs.wisconsin.gov/civil-rights/index.htm>.

In addition, the Contractor must display and publish the applicable nondiscrimination statements in a conspicuous place to service participants at its business location.

Limited English Proficient Non-Discrimination

The Milwaukee County Area Agency on Aging is committed to providing equal opportunity in all programs, services and activities to individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. Those individuals are referred to as limited English proficient, or “LEP.” Meaningful access to Federally funded programs and activities is required by Title VI of the Civil Rights Act of 1964 and its implementing regulations.

The Contractor will design and implement an effective limited English proficiency (LEP) plan to ensure meaningful access to LEP persons at no cost to the LEP persons, in compliance with Title VI of the Civil Rights Act of 1964, and Section 1557 of the Patient Protection and Affordable Care Act of 2010, 42 U.S.C. § 18116, and rules promulgated to implement Section 1557 (81 Fed. Reg. 31376 et seq. (May 18, 2016) (amending 45 C.F.R. Part 92 to implement Section 1557)). The LEP plan will identify individuals who need LEP language assistance, describe language assistance measures that may be provided, require training staff to implement the plan, provide a mechanism for notice to LEP persons who are in need of the services, provide accurate and timely language assistance to LEP persons at no cost to themselves, and provide for monitoring and updating the LEP Plan.

The Contractor understands that interpretation or translation must be performed in a competent, confidential, ethical, and accurate manner at no cost to the LEP individual. The Contractor cannot rely on the LEP individual to provide an interpreter. Minors should not act as interpreters for services under this Contract. .

The Contractor will record the number and date of instances in which interpretation was offered, what service was offered (e.g., staff, in-person contracted, telephone, etc.), whether it was accepted, or whether the LEP individual selected their own interpreter, and in what language group the service was needed. LEP customers should be encouraged to ask for language assistance or discuss any perceived discrimination problems with the LEP Coordinator. Information about discrimination complaint resolution process must be made available upon request.

Access for Persons with Vision, Hearing or Speech Disabilities

The Contractor will design and implement a plan to ensure that the Contractor communicates effectively with people who have vision, hearing, or speech disabilities, in

compliance with Title II of the Americans with Disabilities Act and Section 1557 of the Patient Protection and Affordable Care Act of 2010, 42 U.S.C. § 18116, and rules promulgated to implement Section 1557 (81 Fed. Reg. 31376 et seq. (May 18, 2016) (amending 45 C.F.R. Part 92 to implement Section 1557)). The plan must require that the Contractor shall provide auxiliary aid and services when needed to communicate effectively with people who have communication disabilities to ensure that a person with a vision, hearing or speech disability can communicate with, receive information from, and convey information to, the Contractor at no cost to the person with a disability.

Employment

In the performance of work or execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, national origin or ancestry, sex, sexual orientation, gender identity and gender expression, disability, physical condition, developmental disability as defined in Wis. Stat. 51.01 (5), marital status, genetic information family status, military or veteran status, political affiliation, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which 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 apprenticeships.

The Contractor will post in conspicuous places, available for employment, notices to be provided by the County setting forth the provisions of the nondiscriminatory clause.

The Contractor agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the Contract, which program shall have as its objective to increase the utilization of women, minorities, persons with disabilities, and other protected groups, at all levels of employment in all divisions of the contractor's workforce, where these groups may have been previously under-utilized and under-represented. The Contractor also agrees that in the event of any dispute as to compliance with the afore stated requirements, it shall be their responsibility to show that they have met all such requirements.

The Contractor agrees that it will strive to implement the principles of active efforts to assist Milwaukee County in meeting or exceeding its overall annual goal of participation of Targeted Business Enterprise firms in the provision of services under this contract.

Enforcement

The Contractor agrees to cooperate with County in any complaint investigations, monitoring or enforcement related to civil rights compliance of the MCO or its sub-contractor under this Agreement.

When a violation of the civil rights, equal opportunity or affirmative action provisions of this section has been determined by County, Contractor shall immediately be informed of the violation and a thirty day (30) notice to cure directing the Contractor to take all action

necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractor, further violations of the section are committed during the term of the Contract, County may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Contract, or it may permit Contractor to complete the Contract. In either event, Contractor may be determined ineligible to bid on any future contracts let by County.

10. CLIENT GRIEVANCE.

- A. The Contractor shall provide a grievance procedure for participants served who are dissatisfied with or denied services under this contract and shall affirmatively provide notice to participants of the availability of such grievance procedure.
- B. The Contractor shall maintain a record of complaints or grievances received and shall work toward the positive resolution of all complaints within 72 hours of receipt. Complaints relating to challenges to the official policies or procedures shall not be considered for the purposes of assessing liquidated damages, if any are allowable.
- C. The Contractor shall report any such grievances to the County Program Coordinator pursuant to the terms of the Service Guidelines.

11. INDEMNITY.

Contractor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of statutory benefits under Workers' Compensation Laws, or liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Contract.

12. INSURANCE.

Contractor agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Contractor's activities, by whomever performed, in such coverage and amounts as required and approved by the County. Acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement. A Certificate of Insurance shall be submitted for review for each successive period of coverage for the duration of this agreement, unless otherwise specified by the County, in the minimum amounts specified below. Contractor shall, at its sole expense, maintain the following insurance:

A. Commercial General Liability Insurance including contractual coverage:

The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products – Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

B. Automobile Liability Insurance:

Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

C. Workers' Compensation Insurance:

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

D. Employers Liability Insurance:

Such insurance shall provide limits of not less than \$100,000 per occurrence for bodily injury; \$100,000 per employee for bodily injury by disease, and \$500,000 policy aggregate.

Milwaukee County shall be named as an Additional Insured on the General and Automobile Liability policies as respects the services provided in this agreement. A Waiver of Subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A- rated or better per AM Best's Rating Guide. Any requests for deviations from or waivers of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

13. PERMITS, TAXES, LICENSES.

Contractor is responsible for procuring, maintaining and paying for all necessary federal, state, and local permits, licenses, fees and taxes required to carry out the provisions of this Contract.

14. TERMINATION BY CONTRACTOR.

Contractor may, at its option, terminate this Contract upon the failure of the County to pay any amount that may become due hereunder for a period of ninety (90) days following submission of appropriate billing and supporting documentation; or upon a material change in the Contractor's ability to perform the obligations of this Contract and are outside of the Contractor's control. Termination of the contract shall not take effect until 60 days after the contractor delivers a notice of intent to terminate to the County agent listed in the Notices Section below. Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

15. TERMINATION BY COUNTY FOR VIOLATIONS BY CONTRACTOR.

If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the County shall there upon have the right to terminate it by giving thirty (30) days written notice of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

16. UNRESTRICTED RIGHT OF TERMINATION BY COUNTY.

The County further reserves the right to terminate the Contract at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said termination, the Contractor shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice, and turn over all work product to the County. Upon said termination, Contractor shall be paid for all services rendered through the date of termination. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of the Contract. Termination may also occur due to insufficient federal or state funds.¹

17. CONTRACT RENEGOTIATION AND ADJUSTMENTS

This Contract may be renegotiated in the event of changes required by law, regulations, court action, or inability of either party to perform as committed in this Contract. Amendments to this Contract must be agreed to by both parties in writing.

Where applicable, as set forth in Section 46.09(1), Milwaukee County Code of General

¹ DHS AAA Contract Compliance Manual

Ordinances, no contract or contract adjustment, except for services defined in subsection (3), shall take effect until approved by resolution of Milwaukee County board of supervisors.

18. CONTINUITY OF SERVICE.

A. Contractor recognizes that the services under this contract are vital to the County and must be continued without interruption and that, upon contract expiration or termination, a successor, either County or another contractor, may continue them. Contractor agrees to: (i) furnish phase-in training; and (ii) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. Contractor shall, upon Contractor's written notice: (i) furnish phase-in, phase-out services for up to one hundred eighty (180) days after this contract expires or terminates for any reason; and (ii) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan and shall be subject to County's approval. Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

C. Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

19. PROVISIONS FOR PURCHASED OR LOANED PROPERTY

Any furniture, fixtures, equipment, or vehicles (hereinafter called "property") purchased by Contractor or County, with program funds under this Contract, remains the sole property of County, and in its discretion, County may require such property to be returned to County upon termination of the Contract or any certified service related to the use of the property. Refer to policy DHHS Policy 007, Provisions for Purchased or Loaned Property

No depreciation cost shall be allowed for equipment, vehicle or other capital purchases by Milwaukee County and leased to the vendor.

20. INDEPENDENT CONTRACTOR.

Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Nothing contained in this Contract shall give Contractor any authority to supervise, manage, and/or direct County employees.

21. SUBCONTRACTS.

Assignment of any portion of the work by subcontract must have the prior written approval of County.

22. ASSIGNMENT LIMITATION.

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

23. PROHIBITED PRACTICES.

- A. Contractor during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."
- C. Preference in receiving services under this Contract will not be given by the Contractor to particular participants as a result of a contract or commercial relationship that is not carried out to implement the program funded by this Contract.

24. RECORDS.

- A. The Contractor shall maintain written and electronic records as required by state and federal law and required by program policies.
- B. Both parties understand that the County is bound by the public records law, and as such, all of the terms of this agreement are subject to and conditioned on the provisions of Wis.

Stat. § 19.21, *et seq.* Contractor hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon the contractor shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law but not records directly related to programmatic or fiscal activities under this contract shall be maintained for a period of six years after receipt of final payment under this agreement.

25. TAXES.

Milwaukee County is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by Contractor should be without such taxes.

26. NON-CONVICTION FOR BRIBERY.

Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

27. DEBARMENT OR SUSPENSION

The Contractor certifies that neither the Contractor organization nor any of its principals are debarred, suspended, or proposed for debarment for federal financial assistance (including, but not limited to, General Services Administration's list of parties excluded from federal procurement and non-procurement programs). The Contractor further certifies that potential subcontractors and any of their principals are not debarred, suspended, or proposed for debarment.

28. DRUG FREE WORKPLACE

The Grantee, agents, employees, Subgrantees or Subcontractors under this Agreement shall follow the guidelines established by the Drug Free Workplace Act of 1988.

29. CONFIDENTIALITY.

- A. The Contractor shall implement specific procedures to assure the security and confidentiality of health and medical records and of other personal information about participants, in accordance with Wis. Stats. Chapter 49, Subchapter IV; Wis. Admin. Code § DHS 108.01; 42 C.F.R. 431, Subpart F; 42 C.F.R. 438; 45 C.F.R.

160; 45 C.F.R. 162; and 45 C.F.R. 164 and any other confidentiality law to the extent applicable.

- B. Duty of Non-Disclosure and Security Precautions. The Contractor shall protect and secure all confidential information and shall not use any confidential information for any purpose other than to meet its obligations under this contract.
- C. The Contractor shall hold all confidential information in confidence, and not disclose such confidential information to any persons other than those directors, officers, employees, agents, subcontractors and providers who require such confidential information to fulfill the Contractor's obligations under this contract.
- D. The Contractor shall institute and maintain procedures, including the use of any necessary information technology, which are necessary to maintain the confidentiality of all confidential information. In the event any of the Contractor's directors, officers, employees, or agents fail to properly maintain any confidential information the Contractor will have breached this contract.
- E. Limitations on Obligations. The Contractor's obligation to maintain the confidentiality of confidential information shall not apply to the extent the Contractor can demonstrate that such information:
 - i. Is required to be disclosed pursuant to a legal obligation in any administrative, regulatory, or judicial proceeding. In this event, the CONTRACTOR shall promptly notify the Department of its obligation to disclose the confidential information (unless it has a legal obligation to the contrary) so that the Department may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, the CONTRACTOR shall furnish only that portion of the confidential information that is legally required and shall disclose it in a manner designed to preserve its confidential nature to the extent possible.
 - ii. Is part of the public domain without any breach of this contract by the CONTRACTOR;
 - iii. Is or becomes generally known on a non-confidential basis, through no wrongful act of the CONTRACTOR;
 - iv. Was known by the CONTRACTOR prior to disclosure hereunder without any obligation to keep it confidential;
 - v. Was disclosed to it by a third party which, to the best of the CONTRACTOR's knowledge, is not required to maintain its confidentiality;
 - vi. Was independently developed by the CONTRACTOR;

vii. Is the subject of a written agreement whereby the County or DHS consents to the disclosure of such confidential information by the CONTRACTOR on a non-confidential basis; or

viii. Was a permitted use or disclosure, in accordance with Wis. Stats. Chapter 49, Subchapter IV; Wis. Admin. Code § DHS 108.01; 42 C.F.R. 431, Subpart F; 42 C.F.R. 438; 45 C.F.R. 160; 45 C.F.R. 162; and 45 C.F.R. 164 or other applicable confidentiality laws.

- F. Unauthorized Use, Disclosure, or Loss. If the Contractor becomes aware of any threatened or actual use or disclosure of any confidential information that is not specifically authorized by this contract, or if any confidential information is lost or cannot be accounted for, the Contractor shall notify the DHS Privacy Officer and the County Contract Coordinator within one (1) day of the Contractor becoming aware of such use, disclosure, or loss. The notice shall include, to the best of the Contractor's understanding, the persons affected, their identities, and the confidential information that was disclosed.
- G. The Contractor shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Contractor shall reasonably cooperate with County's efforts, if any, to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its confidential information, including complying with the following measures, which may be directed by County, at its sole discretion:
- i. Notifying the affected individuals by mail or the method previously used by County to communicate with the individual. If the Contractor cannot with reasonable diligence determine the mailing address of the affected individual and the County has not previously contacted that individual, the Contractor shall provide notice by a method reasonably calculated to provide actual notice;
 - ii. Notify consumer reporting agencies of the unauthorized release;
 - iii. Offer credit monitoring and identity theft insurance to affected individuals from a company, and under terms, acceptable to the Department for one year from the date the individual enrolls in credit monitoring;
 - iv. Provide a customer service or hotline to receive telephone calls and provide assistance and information to affected individuals during hours that meet the needs of the affected individuals, as determined by the County.
- H. Indemnification. In the event of an unauthorized use, disclosure, or loss of confidential information, the Contractor shall indemnify and hold harmless the County and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its subcontractors, providers, employees, and agents, in violation of this section, including but not limited to costs

of monitoring the credit of all persons whose confidential information was disclosed, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the County in the enforcement of this section. In addition, notwithstanding anything to the contrary herein, the Contractor shall compensate the County for its actual staff time and other costs associated with the County's response to the unauthorized use, disclosure, or loss of confidential information.

- I. Equitable Relief. The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of confidential information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the Department, which injury will not be compensable by money damages and for which there is not an adequate remedy at law. Accordingly, the Contractor agrees that County and/or DHS, on its own behalf or on behalf of the affected individuals, shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this contract or under applicable law.
- J. Sanctions. In the event of an unauthorized use, disclosure, or loss of confidential information, DHS may impose and the County may pass on sanctions, in the form of civil monetary penalties.
- K. Compliance Reviews. The County may conduct a compliance review of the Contractor's security procedures to protect confidential information.

Contractor agrees that all work product and oral reporting shall be provided only to or as directed by the individual who is signing this Contract on behalf of the County department, below, and not any other person or entity, including any other County employee or official.

- L. Public Records Requirements. Contractor further agrees that, aside from obligations under the public records law as more fully described in this Contract and as determined in cooperation with the County, Contractor shall maintain all materials and communications developed under or relating to this Contract as confidential and shall disclose them only to or as directed by the individual who is signing this Contract on behalf of the County department, below. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for the County and may require Contractor to indemnify County as provided in this Contract.

30. NOTICES.

All notices with respect to this Contract shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received

upon delivery, if delivered by hand or via e-mail, or three days after posting via US Mail, or email to the party addressed as follows:

Indian Council for the Elderly
944 N 33rd Street
Milwaukee, WI 53208

To: Milwaukee County Department on Health and Human Services –
Aging and Disabilities Services
Attn.: Daniel Idzikowski
1220 W. Vliet St. Suite #200
Milwaukee, WI 53205
daniel.idzikowski@milwaukeecountywi.gov

Either party may designate a new address for purposes of this Contract by written notice to the other party.

31. PRO-CHILDREN ACT

The Contractor agrees to comply with Public Law 103-227, also known as the Pro-Children Act of 2001, which prohibits tobacco smoke in any portion of a facility owned, leased, or granted for or by an entity that receives federal funds, either directly or through the state, for the purpose of providing services to children under the age of 18.

32. WHISTLEBLOWER POLICY

Purchaser and Provider agree that ensuring that direct service providers, indirect staff, contract staff, independent service provider(s), and volunteer(s) are afforded protection under state and/or federal whistleblower protection laws is paramount to the intent of this Agreement. Provider represents and warrants that it will comply with the provisions of the Sarbanes-Oxley Act of 2002 (SOX), as applicable to specified organizations including nonprofit as well as other state and/or federal whistleblower protection laws. The Milwaukee County Department of Health and Human Services (DHHS) requires all Providers contracting with the department under this Agreement, or any other agreement with DHHS, to adopt and implement a whistleblower policy, which shall be made available upon request, per **DHHS Policy 003, Whistleblower Policy** available at: <https://county.milwaukee.gov/EN/DHHS/Provider-Portal>

33. MISCELLANEOUS.

This Contract shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Contract constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Contractor

acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local or federal law, rules and regulations and orders.

34. CRITICAL INCIDENTS

To ensure timely and accurate documentation and notification of Critical Incidents involving Milwaukee County Department of Health & Human Services (“DHHS”) service recipients and/or their families/guardians/visitors and/or any other contacts, DHHS contractors and service providers, it is the policy of DHHS that all "critical incidents" must be documented and reported to DHHS within 24 hours of becoming aware of the critical incident to confirm that necessary actions are taken in an attempt to ensure the health, safety and welfare of clients and providers. Refer to DHHS Policy 010, Critical Incident Policy. Policies can be found at:

<https://county.milwaukee.gov/EN/DHHS/Provider-Portal>

35. PANDEMIC PREPAREDNESS

- A. Contractor is responsible for compliance with all state, federal, and local orders, including Milwaukee County Administrative Orders, and all regulations and laws regarding the any declared Public Health Emergency. Further, Contractor will follow all relevant agency guidance, specifically issued by the United States Center for Disease Control, including, but not limited to, social distancing, hygiene, sanitation of work spaces, providing proper personal protective equipment to staff, proper staff screening methods and education of staff.
- B. If determined applicable by the County, Contractor should have a written Pandemic Preparedness Plan that complies with all applicable laws, regulations, orders, and agency guidelines regarding COVID-19 and, at a minimum, meets the requirements in the [Milwaukee County COVID-19 Response Preparedness Plan Checklist](#).

Signature page follows