

COUNTY OF CARBON PURCHASING DEPARTMENT

Linda Dopira
Purchasing Manager



Courthouse Annex 2nd Flr.
2 Hazard Square
P.O. Box 129
Jim Thorpe, PA 18229
Ph: (570) 325-8988
Fax: (570) 325-4080
E-mail: carbonpurchasing@carboncountv.net

Memorandum

To: PERS Providers
From: Linda Dopira, Purchasing Manager
Date: 9/15/16
Re: Personal Emergency Response Systems Request for Proposals

The County of Carbon is seeking proposals from qualified PERS companies for units provided to eligible clients as determined by the Carbon County Area Agency on Aging.

Please note all the important information, requirements and deadlines referenced on the cover page of the attached document.

The County will respond to inquiries as written addenda distributed via email to all plan holders.

Thank you.

Attachment

cc: Eloise Ahner, Chief Clerk/County Administrator
Susan Ziegler, Administrator, Area Agency on Aging
Colleen Klein, Asst. Chief Clerk
Cindy Bizarre, Executive Secretary, Human Services

COUNTY OF CARBON
REQUEST FOR PROPOSALS
FOR
PERSONAL EMERGENCY RESPONSE SYSTEM,
CARBON COUNTY AREA AGENCY ON AGING

Written Inquiry Period Deadline:

Ends: 12:00 p.m., Monday, September 26, 2016

Via Email to: Linda Dopira

carbonpurchasing@carboncounty.net

Submittal Deadline:

3:30 P.M., Monday, October 7, 2016

To: Carbon County Commissioners
Attn: Eloise Ahner, Chief Clerk
Courthouse Annex, 3rd Floor
2 Hazard Square
P.O. Box 129
Jim Thorpe, Pa. 18229

**Your Quote Must Include (1) Original
& (2) copies of:**

- Lobbying Certification, page 24
- Assurance of Compliance, page 25
- Form of Proposal, page 36
- HIPPA Agreement, page 38

County's Point of Contact:

Linda Dopira, Purchasing Manager

Ph: (570) 325-8988

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CONTRACT

This is an agreement made this ____ day of _____, 2016 by and between the *Carbon County Commissioners (for the Carbon County Area Agency on Aging)* hereinafter referred to as "AGENCY" and _____, a business corporation having a principal office at _____, hereinafter referred to as "PROVIDER" for the provision of Personal Emergency Response Systems (PERS).

WITNESSED:

WHEREAS, the Carbon County Commissioners have been designated as agent for both the Administration of Aging of the U.S. Department of Health and Human Services, and the Department of Aging of the Commonwealth of Pennsylvania to establish a local Area Agency on Aging responsible for advancing the well-being of Pennsylvania's older services, as described in the Older Americans Act of 1965, as amended in 2000, and to enhance the quality of life of older Pennsylvanians by empowering the community, the family and the individual; and

WHEREAS, the Carbon County Commissioners have entered into a legal and binding contract with the said Pennsylvania Department of Aging dated January 1, 2016 through June 30, 2021 which funds for the purpose of providing such services for the aging under PA Act 70, The older Americans Act of 1965, as amended and the Omnibus Budget Reconciliation Act of 1987 (OBRA-1987); and

WHEREAS, the PROVIDER desires to provide services pursuant to the regulations of the Older Americans Act and state statutes.

NOW, THEREFORE, the parties hereby agree as follows:

1. This Agreement is subject to the provisions of state and federal regulations established for the provision of social services by each source of funding and provisions set forth in Attachments A through I attached hereto and incorporated herein. PROVIDER is hereby bound by all such regulations and each and every provision of this Agreement to the same extent the Carbon County Commissioners are bound by said contract with the Pennsylvania Department of Aging. Further, this agreement is subject to modifications by amendments to such laws and regulations without prior notice to the PROVIDER. In the event of termination, limitations on or diminution of such funds of Federal and State Funding, then in that event, this Agreement is null and void. If any part of this Agreement is at variance with the laws and rules and regulations of the State and Federal Governments, it is understood and agreed that the rules and regulations of the state and federal governments shall prevail and supersede this Agreement which shall be deemed amended accordingly.
2. Subject to its other provisions and ability of state and federal funds, the term of this agreement shall commence on the date of the Notice to Proceed and terminate on June 30, 2019. Subject to negotiation of terms and upon mutual consent of the parties, the term of this agreement may be extended for two (2) additional one (1) year terms.

3. Places where services will be provided and facilities in which services are to be provide are set forth in Attachment F attached hereto made apart hereof.
4. The cost per unit shall include supervision, labor, insurance, training, equipment and all administrative costs. This program and budget shall be on file at the Carbon County Area Agency on Aging, Palmerton, Pennsylvania. Scope of service to be provided is listed in Attachment F. The AGENCY does not guarantee that any specific amount of services will be awarded to the PROVIDER.
5. PROVIDER shall only incur costs, which are directly related as a result of provisions of the service. An itemized budget breakdown of costs involved per unit of service will be available at the office of the PROVIDER.
6. The PROVIDER agrees that funds allocated under this Agreement will not be used to replace funds from non-federal and non-state resources. The PROVIDER further agrees to continue or to initiate efforts to obtain support from private sources and other public organizations for services funded under this Agreement.
7. During the period of the Agreement, all information obtained by the PROVIDER though work on the project will be made available to the AGENCY immediately upon demand. If requested, the PROVIDER shall deliver to the AGENCY background material prepared or obtained by the PROVIDER incident to the performance of this Agreement. Background material is defined as original work papers, notes, and drafts prepared by the PROVIDER to support the data and conclusions in the final reports, and includes completed questionnaires etc., and material in electronic data processing form, computer programs, other printed materials, pamphlets, maps, drawings, and books acquired by the contractor during the term of the Agreement and directly related to the services being rendered.
8. The PROVIDER agrees to accept the full responsibility for the performance of the terms of this Agreement:
 - a. The PROVIDER agrees that when funds obligated under this Agreement are available for the provision of services by the PROVIDER, only when the PROVIDER has received express written approval of the AGENCY and Carbon County Commissioners will the PROVIDER begin to perform the services outlined in this contract. The term "Subcontract," as used in this Agreement, shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public, and purchase orders not exceeding \$1,000.00. Assurance of Compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1974, the Age of Discrimination Act of 1975 and the Americans with Disabilities Act of 1990, as set out in 42 U.S.C. Section 12101 et esq., shall be included and made a part of every subcontract so that such provisions will be binding upon each SUBCONTRACTOR as well as the PROVIDER.

- b. The PROVIDER shall submit for review and approval by the AGENCY, all subcontracts, initiated under the terms of this Agreement with any subcontracted agencies before the execution of such subcontracts.
 - c. No provision of this paragraph and no such approval by the AGENCY of any subcontract shall be deemed in any event in any manner to provide for the incurrence of any obligation of the AGENCY in addition to the total agreed upon price proposed by the PROVIDER and accepted by the AGENCY and the County of Carbon.
 - d. _____ is hereby designated as the person responsible for satisfying the performance of the terms of this Agreement.
 - e. Susan Zeigler, Administrator of the Carbon County Area Agency on Aging, is hereby designated by the Carbon County Commissioners as the person who will monitor the performance of the PROVIDER.
 - f. The PROVIDER agrees to fully comply with the Commonwealth's Contractors Integrity Provisions set forth in Attachment B (General Terms and Conditions) and any changes or modifications made thereto.
9. WHEREAS this Agreement is for the provision of service to individuals or families, the PROVIDER will establish a system through which applicants for and recipients of service may present grievances about the operation of the service program. The PROVIDER will advise applicants and recipients of their right to appeal denial or exclusion from the program or failure to recognize the recipient's choice of a service and of their right to a hearing in these respects. Whenever an applicant or recipient requests a fair hearing, the AGENCY will make arrangements to provide such a hearing through its hearing procedures.

The cost of providing services to individuals under this Agreement may be reimbursed from the Aging Block Grant or other funding if the service provided is allowable in the State's Services Program Plan. When eligible persons' demand for services exceeds service availability, the Agency Care Managers will conduct priority determination consistent with current AGENCY policy.

Carbon County Area Agency on Aging Care Managers assess the needs of all individuals referred for service and together with the Care Manager Supervisor make the determination of those persons appropriate for service referral.

The AGENCY will supply a comprehensive list of providers from which the consumer shall choose services. If the PROVIDER identifies clients requiring services, the AGENCY will certify the eligibility and need of the referred client prior to the provision of service. The PROVIDER agrees not to refuse service to any referred client, except in those instances where the worker may be subjected to personal danger. The PROVIDER also agrees not to terminate services without prior approval of the AGENCY and consumer.

All program donations received by the PROVIDER staff from clients must be submitted on a regular basis to the Fiscal Department of the PROVIDER and the PROVIDER in turn will forward all donations to the AGENCY'S Fiscal Department together with the monthly billing statement. All donations must remain confidential throughout this process.

10. This Agreement and its Attachments contain all the terms and conditions agreed to by the parties. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall not be valid until they have been reduced to writing, duly signed by both parties and attached to the original of this Agreement. Continuation of this Agreement is based on the compliance with all terms and conditions. No other agreements, oral or otherwise, shall be deemed to exist or bind any of the parties hereto.
11. This Contract may be cancelled by the COUNTY by giving the PROVIDER thirty (30) days written notice of Intent to Cancel. If the Contract is terminated by the COUNTY, the PROVIDER will be paid for undisputed and verified time or goods furnished by the PROVIDER, and for undisputed and verified expenses. In the event of an early termination by the COUNTY, the COUNTY shall be entitled to a pro-rata refund of any amounts paid in advance for services or goods under this Contract.

{This Space Left Intentionally Blank }

IN WITNESS WHEREOF, the said parties have hereunto caused their common or corporate seals to be affixed hereto and to be witnessed or duly attested by their proper officers, the day and year first above written.

(Company Name)

ATTEST OR WITNESS:

BY:

(Signature)

(Name Printed)

(Title)

COUNTY OF CARBON

COUNTY COMMISSIONERS

(Date of Board Approval)

ATTEST: _____ (SEAL)
CHIEF CLERK/COUNTY ADMINISTRATOR

APPROVED AS TO LEGALITY AND FORM:

COUNTY SOLICITOR

ATTACHMENT A

PAYMENT PROVISIONS/PUBLIC NOTICES

PAYMENT PROVISIONS

The AGENCY agrees to pay the PROVIDER for services rendered pursuant to his agreement as follows.

1. Subject to the availability of State and Federal funds and other terms and conditions of this Agreement, the AGENCY will reimburse the PROVIDER for costs incurred and validly attributable to the Agreement, in accordance with the payment provisions incorporated herein.
2. The AGENCY agrees to pay the PROVIDER for services rendered as described in the contract objectives pursuant to this Agreement.
3. Payments will be made on the bases of invoiced actual expenditures and evidence of provision of the appropriate level of services by PROVIDER.
4. The PROVIDER will submit monthly invoices to the AGENCY on or before the 10th of the following month. After verification the AGENCY will submit the invoice to the COUNTY for reimbursement within thirty (30) days from the receipt of any undisputed monthly invoice. See Attachment F.
5. The AGENCY shall have the right to disapprove any expenditure made by the PROVIDER which is not in accordance with the terms of this Agreement, and may adjust payments to the PROVIDER accordingly.
6. The PROVIDER agrees to permit, support and participate in such training as may be deemed necessary by the AGENCY to enable paid and volunteer program personnel to administer the services described.
7. The AGENCY reserves the right to inspect service sites at any time to determine compliance with service specifications, and to recommend the withholding of payments for services, procedures and conditions not meeting prescribed requirements.

PUBLIC NOTICES

All notices, written or oral, including but not limited to informational pamphlets, press releases, research reports, media announcements, and similar public notices prepared and released by the PROVIDER shall include the following statement:

**“This project is funded, in part, under a contract with
the Pennsylvania Department of Aging.”**

The AGENCY reserves the right to review such notices prior to their public release of termination.

ATTACHMENT B

GENERAL TERMS AND CONDITIONS

1. INDEPENDENT CAPACITY OF PROVIDER

The Provider, its employees, agents, subcontracts, and Board of directors are not deemed to be or considered employees of the County in any manner whatsoever and shall act in an independent capacity and not as officers, employees or agents of the County.

2. CONFIDENTIALITY/HIPAA

No information about a client or information obtained from a client, shall be disclosed by the PROVIDER in a form that identifies the client without the informed and express written consent of the client or of his or her legal representative, unless disclosure is required by court order or for other program monitoring by authorized Federal, State or local monitoring agencies. Lists of older persons compiled for information and referral purposes shall be used solely for the purpose of providing services, and only with the informed and express written consent of each individual on the list.

The Provider shall, to ensure confidentiality of individual information, make provisions for security of records and protection of individual privacy as required by applicable laws or regulations. The Provider shall require that all subcontractors adhere to the applicable individual confidentiality laws and regulations or the Department, Federal government, and policies of the County.

Provider warrants and represents that it will comply with the Health Insurance Portability and Accountability Act of 1996 (HBPA) with respect to the processing, privacy and security of medical and/or health information and related documentation/records in connection with the Provider's provision of services as set forth under this Agreement, whether as a "covered entity" or as "business associate" of the County. Provider understands that it assumes all responsibility for its own compliance with HIPAA. Provider agrees to indemnify, defend, reimburse, and hold harmless the County, its officers, agents, and employees with respect to any liability, including costs or penalties assessed to, or borne by, the County, whether civil or otherwise arising from Provider's compliance or noncompliance with respect to HIPAA. See Attachment I.

3. PROVIDER INTEGRITY PROVISIONS

A. Definitions

1. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to enter into an Agreement with the AGENCY.
2. Consent means written permission signed by a duly authorized officer or employee of the AGENCY, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the AGENCY shall be deemed to have consented by virtue of execution of this Agreement.

3. PROVIDER means the individual or entity that has entered into this Agreement with the AGENCY, including directors, officers, partners, managers, key employees, and owners of more than a 5% interest.
4. Financial interest means:
 - (a) ownership of more than a 5% interest in any business; or
 - (b) holding a position as an officer, director, trustee, partner, employee or the like or holding any position of management.
5. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

B. The PROVIDER shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of State or Federal laws, regulations, or other requirements that govern contracting with the AGENCY.

C. The PROVIDER shall not disclose to others any confidential information gained by virtue of this Agreement.

D. The PROVIDER shall not, in connection with this or any other Agreement or Agreement with the AGENCY, directly or indirectly, offer, confer, or agree to offer or 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 officer or employee of the AGENCY.

E. The PROVIDER shall not, in connection with this or any other contract or agreement with the AGENCY, directly or indirectly, offer, give, or agree or promise to offer or give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the AGENCY.

F. Except with the consent of the AGENCY, neither the PROVIDER nor anyone in privity with the PROVIDER shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement except as provided therein.

G. Except with the consent of the AGENCY, the PROVIDER shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.

H. The PROVIDER, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the AGENCY in writing.

I. The PROVIDER, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that such does not and has not

violated any of these provisions.

J. The PROVIDER upon the inquiry or request of the County Commissioners or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the AGENCY to the PROVIDER'S integrity or responsibility, as those terms are defined by the AGENCY'S statues, regulations, or management directives. Such information may include, but shall not be limited to, the PROVIDER'S business or financial records, documents or files of any type or form, which refer to or concern this Agreement. Such information shall be retained by the PROVIDER for a period of three years beyond the termination of the Agreement unless otherwise provided by law.

K. For violation of any of the above provisions, the AGENCY may terminate this Agreement and other Agreements with the PROVIDER, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another PROVIDER to complete performance hereunder and debar and suspend the PROVIDER from doing business with the AGENCY. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the AGENCY may have under law, statute, regulation, or otherwise.

4. SUBCONTRACTS

The PROVIDER agrees to accept full responsibility for the performance of the terms of this Agreement, including the work performed through any subcontracting. The PROVIDER shall, in subcontracting under this Agreement, require such PROVIDERS to comply with all requirements as set forth in these general terms and conditions, as all applicable State and Federal requirements pursuant to the Older Americans Act, as amended 42 U.S.C.A. Section 3001 *et seq.* Except for those subcontracts specifically authorized by this Agreement, the PROVIDER shall not enter into subcontracts for any of the services contemplated under this Agreement without obtaining prior written approval of the AGENCY. In all events, the PROVIDER shall be responsible for the quality and quantity of the work performed by any of its approved subcontractors as set forth in the General Terms and Conditions of this Agreement.

5. EXAMINATION OF RECORDS

A. The PROVIDER agrees to maintain books, program and financial records, documents and other evidence pertaining to the costs and expenses of this Agreement.

B. The PROVIDER agrees to make available at the Office of the PROVIDER at all reasonable times during the term of this Agreement and the period set forth below, any of the records for inspection, audit or reproduction by an authorized representative of the AGENCY or the County Auditor or State or Federal auditors.

C. Except for documentary evidence delivered to the AGENCY, the PROVIDER shall preserve and make available all records for a period of five years from the date of final payment under this Agreement; and for such period, if any, as specified by paragraphs 1 and 2 below:

1. 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 five years from the date of any resulting final statement.
2. Records which relate to litigation or the settlement of claims arising out of the performance of this Agreement, or costs under this Agreement as to which exception has been taken by the auditors shall be retained by the PROVIDER until such litigation, claims or exceptions have been litigated or settled to find disposition
3. The provisions of this paragraph shall be applicable to and included in each subcontract hereunder.

6. PROGRESS REPORTS

A. The PROVIDER and its PROVIDERS shall furnish to the AGENCY such progress and periodic reports in such form and quantity as the Agency may from time to time require, including but not limited to, status reports of the project, proposed budgets, invoices, copies of all contracts executed and proposed and any and all other information relative to the project as may be requested.

B. In the event that the AGENCY determines that the PROVIDER or its PROVIDERS have not furnished such reports as required by the AGENCY, the AGENCY, by giving written notice to the PROVIDER, may suspend payments under this Agreement, until such time as the required reports are submitted.

7. INSURANCE

The Service Provider shall, at its sole cost and expense, procure and maintain in full force and effect covering the performance of the services rendered under this agreement, insurance in the types and limits specified below. In addition to the insurance coverage and limits specified herein, the Service Provider shall obtain any other insurance coverage as may be required by law.

A. General Liability Insurance

1. Limits of Liability \$ 2,000,000 in the aggregate and per occurrence
2. Coverage: Premise operations, blanket contractual liability, personal injury liability (employee exclusion deleted), products and completed operations, independent contractors, employees and volunteers as additional insured, joint liability, and broad form property damage (including completed operations).

B. Workers' Compensation and Employers' Liability Insurance

1. Limits of Liability: Workers' Compensation - Statutory Limits Employers' Liability: Statutory Limits.
2. Other States' coverage and Pennsylvania endorsement.

C. Automobile Liability

1. Limit of Liability: \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
2. Coverage: Owner, non-owned and hired vehicles.

D. Professional Liability Insurance

1. Limit of Liability: \$2,000,000 by claim and in the aggregate
2. Coverage for occurrences happening during the performance of services required under this agreement shall be maintained in full force and effect under the policy. The policy shall include a "tail coverage" for up to a two (2) year period of exposure.

The Certificate of Insurance shall contain an endorsement naming the County of Carbon as a "certificate holder" and as an "additional insured" party under the general liability coverage, and a provision that at least thirty (30) calendar days prior written notice be given to the County in the event any coverage is canceled or non-renewed, or limits or coverage reduced. Coverage shall be primary and non-contributory.

Proof of the PROVIDER'S insurance coverage is attached hereto as Attachment H.

8. INDEMNIFICATION/ HOLD HARMLESS

PROVIDER being bound by all applicable State and Federal regulations, hereby expressly agrees to hold the AGENCY harmless against all audit exceptions and against or from any or all claims, demands, actions, suits and liabilities and losses arising from any act or omission arising from the PROVIDER'S fault or negligence or through the negligence or fault or any manufactured products supplied by the PROVIDER and used by the AGENCY in the performance of the work under this contract. This obligation shall extend to and include all litigation costs and reasonable attorney fees incurred by the AGENCY in response to such claims, demands, actions, or liabilities provided it is ultimately determined that such claim resulted from the PROVIDER'S or manufacturer's fault or negligence.

9. RIGHTS IN DATA: COPYRIGHTS AND DISCLOSURE

A. Definition: The term "data", as used herein, includes written reports, drawings, studies and work of any similar nature which is required to be delivered under the Agreement. It does not include PROVIDER'S financial reports or other information incidentals to Agreement administration.

B. Rights in Data: Data submitted to and accepted by the Agency under Agreement shall be the property of the Agency and it shall have foil 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 PROVIDER. PROVIDER may retain a copy of such data for its internal use.

C. Copyrights: PROVIDER relinquishes any and all copyrights and/or privileges to data developed under this Agreement. PROVIDER shall not include in the data any copyrighted matter without the written approval of the Agency unless PROVIDER provides the Agency

with written permission of the copyright owner for the Agency to use such copyrighted matter in a manner provided herein. Any product or material that is to be printed or developed for any publication or distribution or other public display as a result of this Agreement, must be reviewed and approved in writing by the Administrator of the Agency prior to final production or printing. All data produced by funds provided through this Agreement must contain the Agency's logo and appropriate state officials' names on the cover and the following notation on the inside cover on Title Page:

“This document was produced with funds provided under Contract No. 4100034706 from the Pennsylvania Department of Aging.”

D. The PROVIDER shall defend any suit or proceeding brought against the Agency on account of any alleged infringement of any copyright arising out of the performance of this Agreement, including any suit or proceeding relating to all work, services, materials, reports, studies and computer programs provided by the PROVIDER; provided, nevertheless, that the Agency shall provide prompt notification in writing of such suit or proceedings together with full right, authorization and opportunity to conduct the defense thereof, and full information and all reasonable cooperation, for the defense of the same. If principles of governmental or public law are involved, the County may participate in the defense of any such action. The PROVIDER shall pay all damages and costs awarded therein against the County. If information and assistance are furnished by the County at PROVIDER'S written request, it shall be at the PROVIDER'S expense, but the responsibility for such expense shall be only that within the PROVIDER'S written request. If any of the materials, reports, studies or computer programs provided by the PROVIDER are held to constitute infringement and the use or publication thereof is enjoined in such suit or proceeding, the PROVIDER shall, at its own expense and at its 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 obligation of the PROVIDER under this paragraph, continue without time limit. It is understood that the PROVIDER is responsible for defending suit against the County on account of any alleged infringement of any copyright arising out of information or material supplied by only the PROVIDER under this Agreement.

10. AMERICANS WITH DISABILITIES ACT

A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act of 1990, 28 C.F.R. §35.101 et seq., the PROVIDER 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 PROVIDER 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 AGENCY through contracts with outside PROVIDERS.

B. The PROVIDER shall be responsible for and agrees to indemnify and hold harmless the AGENCY from all losses, damages, expenses, claims, demands, suits and actions brought by

any party against the AGENCY as a result of the PROVIDER'S failure to comply with the provisions of paragraph A. above.

11. PROVIDER RESPONSIBILITY

A. The PROVIDER certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government, and if the PROVIDER cannot so certify, then it agrees to submit a written explanation of why such certification cannot be made.

B. If the PROVIDER enters into subcontracts or employs under the Agreement any subcontractors/individuals who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this Agreement or any extensions or renewals, thereof, the AGENCY shall have the right to require the PROVIDER to terminate such subcontracts or employment.

C. The PROVIDER agrees to reimburse the AGENCY for reasonable costs investigations incurred by the Office of the Inspector General for investigations of the PROVIDER'S compliance with the terms of this or any other Agreement between the PROVIDER and the AGENCY which results in the suspension or debarment of the PROVIDER. Such costs shall include, but not limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Subcontractor shall not be responsible for investigative costs for investigations which do not result in the PROVIDER'S suspension or debarment.

D. The PROVIDER may obtain the current list of suspended and debarred Providers by assessing the Department's web site at www.dpw.state.pa.us and clicking on the appropriate links. Subcontractors by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Bldg.
Harrisburg, PA 17125
Telephone (717) 783-6472
Fax (717) 787-9138

The signing of this agreement by Provider certifies that it or its subcontractors are not debarred or suspended from the Medicaid and/or Medicare programs. The County will be notified immediately by Provider if the above status occurs and/or changes during the term of this agreement.

By signing this Agreement, the Provider certifies that it will provide a drug-free workplace. Provider agrees to comply with all Federal regulations as they relate to disclosure of lobbying activities (Federal Register, Volume 55, Number 38). See Attachment D.

12. NON-DISCRIMINATION

A. PROVIDER shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, handicap, ancestry, national origin, familial status, pregnancy, age, gender or sexual preference. PROVIDER shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to the aforementioned conditions. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. PROVIDER shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

B. PROVIDER shall send each labor union or workers' representative with which it has a collective bargaining agreement or other Agreements 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 PROVIDER.

C. It shall be no defense to a finding of noncompliance with this non-discrimination clause that PROVIDER had delegated some to its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the PROVIDER 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.

D. 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 PROVIDER will be unable to meet its obligations under this non-discrimination clause, PROVIDER shall then employ and fill vacancies through other non-discriminatory employment procedures.

E. PROVIDER shall comply with all State and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of PROVIDER'S noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and PROVIDER may be declared temporarily ineligible for further AGENCY contracts, and other sanctions may be imposed and remedies invoked.

F. PROVIDER 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 PROVIDER does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting AGENCY.

G. PROVIDER shall include the provisions of this non-discrimination clause in every subcontract, so that such provisions will be binding upon each PROVIDER.

H. PROVIDER obligations under this clause are limited to the PROVIDER'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.

13. PROPERTY AND SUPPLIES

The PROVIDER agrees to obtain all supplies and equipment for use in the performance of this Agreement at the lowest practicable cost and to purchase by means of a system of competitive bidding whenever required by law.

14. AGREEMENT SUBJECT TO LAWS AND REGULATIONS

This Agreement is subject to the provisions of all pertinent Federal, State and Local laws and regulations and all amendments made thereto. Definitions of service, eligibility of recipients of service and other limitations on the purchase of the services established in this Agreement are subject to modification by amendments to Federal, State and Local laws and regulations without further notice to the PROVIDER.

15. INTERESTS OF MEMBERS OF THE AGENCY AND OTHERS

No officer, member or employee of the AGENCY, who exercises any functions or responsibilities under this Agreement, shall participate in any decision relating to this Agreement which affects their respective personal interest or the interest of any corporation, partnership or association in which directly or indirectly, they may be interested; nor shall any such officer, member or employee of the AGENCY have any interest, direct or indirect, in this Agreement or the proceeds thereof.

16. INTEREST OF PROVIDER

The PROVIDER covenants and agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The PROVIDER further covenants and agrees that in the performance of this Agreement, it shall not knowingly employ any person having such interest. PROVIDER further certifies that no member of the board of the PROVIDER or any of its officers or directors have such an adverse interest.

17. TERMINATION OF AGREEMENT

A. Termination for Default: This Agreement, and all attachments which have been incorporated by reference, contains all the terms, provisions, and conditions of the Agreement. All provisions herein are intended by the parties to be whole and entire, and no provision, nor any part thereof, is intended to be severable. However, in the event the Provider fails to fulfill in a timely and proper manner its obligations under this Agreement, the County may issue a notice of non-compliance requiring compliance within specified period of time. If Provider shall fail to comply within that period of time, the County may deem such non-compliance as cause to sever the Agreement in whole or part, by giving thirty 30 days written notice.

Any alteration, variation, modification, or waiver of any provision of this Agreement shall be valid only when reduced to writing, duly acknowledged by the parties hereto by execution of an addendum which shall be attached to and made a part of this Agreement.

Provider shall not be held responsible for delay or failure to perform hereunder when such a delay or failure is due to fire, epidemic, natural disaster, or public enemy.

The County has the option to place the Provider on probation if it is found not in compliance with the various requirements so stated within this Agreement. If placed on probation, Provider agrees to develop a corrective action plan as it relates to the cited non-compliance issue(s). Provider will be notified by certified mail or in person of the cited non-compliance issue(s).

The County reserves the right to suspend or revise payment, obtain repayment of improperly expended funds or withhold funds in whole or part for reasons of non-compliance with the terms and provisions of this Agreement.

Notwithstanding the above, the PROVIDER shall not be relieved of liability to the AGENCY of damages sustained by the AGENCY by virtue, in any manner or degree, of the PROVIDER'S nonperformance of its services hereunder; however, such damages shall not exceed the amount of this Agreement.

B. Termination for Convenience: The AGENCY or PROVIDER may terminate this Agreement at any time by giving written notice to the other party of such termination by specifying the effective date thereof, at least thirty (30) days before the effective date of such termination.

18. ASSIGNABILITY

The PROVIDER shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written approval of the AGENCY thereto, which shall be attached to the original Agreement, and subject to such conditions and provisions as the AGENCY may deem necessary. No such approval by the AGENCY of any assignment shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Agency in addition to the total agreed-upon price: PROVIDED, however, that claims for compensation due or to become due the PROVIDER from the AGENCY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly in writing to the AGENCY.

19. COVENANT AGAINST CONTINGENT FEES

The PROVIDER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee (excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business). For breach or violation of this warranty, the AGENCY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the consideration otherwise due under the Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

20. AVAILABILITY OF FUNDS

The obligations of the AGENCY under this Agreement are subject to the availability and appropriation of funds by the General Assembly of Pennsylvania or the federal government under the Older American Act, 42 U.S.C. Section 3001 et seq., Limitations on or diminution of such funds from either the State or Federal Government to the County shall constitute full and adequate reason for termination of the Agreement by the County hereunder without further action by Provider. Provider shall, upon written notification by the County and in the sole option of the County provide a final statement of services to the date of termination.

ATTACHMENT C

AUDIT REQUIREMENTS & PROVISIONS

The Pennsylvania Department of Aging (PDA) distributes federal and state funds to local governments and nonprofit organizations. Federal expenditures are subject to federal audit requirements, and federal and state funding passed through PDA are subject to PDA audit requirements. If any federal statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the subsequent statute shall govern. The PDA provides the following audit requirements in accordance with the Commonwealth of Pennsylvania, Governor's Office, Management Directive 325.9, as amended December 3, 2003.

Sub recipient means an entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. For purposes of this audit clause, a subrecipient *is not* a vendor that receives a procurement contract to provide goods or services that are required to provide the administrative support to carry out a federal program.

AUDIT REQUIREMENTS - NONPROFIT ORGANIZATIONS

Local government and nonprofit organizations must comply with all federal audit requirements, including: the Single Audit Act, as amended; the revised Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Government, and Non-Profit Organizations*, and any other applicable law or regulation, as well as any other applicable law or regulation that may be enacted or promulgated by federal government.

Local government or nonprofit organizations that expend federal awards of ***\$500,000*** or more during its fiscal year, received either directly from the federal government, indirectly from a pass-through entity, or a combination of both, to carry out a federal program, *are required* to have an audit performed in accordance with the provisions of OMB Circular A-133, as revised.

If a local government or nonprofit organization expends ***total federal awards of less than \$500,000*** during its fiscal year, it is exempt from these audit requirements, but is required to maintain auditable records of federal or state funds that supplement such awards. Records must be available for review by appropriate officials.

GENERAL AUDIT PROVISIONS- NONPROFIT ORGANIZATIONS

Local government or nonprofit organizations are responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal awards.

The Commonwealth reserves the right for federal and state agencies, or their authorized representatives, to perform additional audits of a financial and/or performance nature, if deemed necessary by Commonwealth or federal agencies. Any such additional audit work can incorporate the work already performed by the subrecipient's auditor. Any additional work authorized or performed by the federal or state agency will be borne by those agencies at no addition expense to the subrecipient.

If it is decided that an additional audit of this contract will be performed, the subrecipient will be given advance notice. The subrecipient shall maintain books, records, and documents that support the services provided, that the amounts earned are in accordance with the contract, and that the subrecipient has complied with the contract terms and conditions. The subrecipient agrees to make available, upon reasonable notice, at the office of the subrecipient, during normal business hours, for the term of this contract and the retention period set forth in this Audit Clause, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative^).

Audit working papers and audit reports must be retained by the subrecipient's auditor for a minimum of *three* years from the date of issuance of the audit report, unless the subrecipient's auditor is notified in writing by the Commonwealth, or the cognizant or oversight federal agency, to extend the retention period. Audit working papers will be made available, upon request, to authorized representatives of the Commonwealth, the Cognizant or oversight agency, the federal funding agency, or the General Accounting Office.

The subrecipient shall preserve all books, records, and documents related to this contract for a period of time that is the greater of *four* years from the contract expiration date, until all questioned costs or activities have been resolved to the satisfaction of the Commonwealth, or as required by applicable federal laws and regulations, whichever is longer. If this contract is completely or partially terminated, the records related to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

Records that relate to litigation of the settlement of claims arising out of performance or expenditures under this contract to which exception has been taken by the auditors shall be retained by the subrecipient or provided to the Commonwealth at the PDA's option until such litigation, claim, or exceptions have reached final disposition.

Except for documentary evidence delivered pursuant to litigation or the settlement of claims arising out of the performance of the contract, the subrecipient may, in fulfillment of his obligation to retain records as required by this Audit Clause, substitute photographs, microphotographs, or other authentic reproductions of such records after the expiration of *two* years following the last day of the month of reimbursement to the contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth.

All audits shall be performed in accordance with the generally accepted Government Auditing Standards (The Yellow Book) as published by the Comptroller General of the United States.

The Provider will be subject to on site fiscal and program monitoring.

As Applicable, the provider shall have subcontractors obtain audits of their contracts in accordance with the applicable Federal, State and County audit requirements. The provider shall follow up on all disclosed findings and questioned costs in the audit reports. The provider shall retain audits for a period of *four* years after termination of the provider's contract with the subcontractor or until resolution of any audit exceptions or other claims or actions involving a subcontractor.

SUBMISSION OF AUDIT REPORTS TO THE AGENCY

REQUIRED REPORTS

Submit federally required audit reports in accordance to OMB Circular A0133, Subsection .320, Report Submission. Include the following documentation to the Carbon County Area Agency on Aging within 120 days of the close of the fiscal year.

1. Data Collection Form
2. Financial statements and a Schedule of Expenditures of Federal Awards (SEFA);
3. Auditor's reports on the financial statements, the SEFA, internal control, and compliance, as well as a schedule of prior audit findings;
4. Summary schedule of prior audit findings;
5. Corrective Action Plan; and
6. Management letter comments

PERIOD SUBJECT TO AUDIT

A federally required audit, made in accordance with OMB Circular A-133, encompasses the fiscal period of the provider. Therefore, the period of the federally required audit may differ from the official reporting period as specified in this agreement.

CORRECTIVE ACTION PLAN

The provider shall prepare a corrective action plan (CAP) to address all findings of noncompliance, internal control weaknesses, and/or reportable conditions disclosed in the audit report. For each finding noted, the CAP should include:

1. a brief description identifying the findings;
2. whether the provider agrees with the finding;
3. the specific steps to be taken to correct the deficiency or specific reasons why action is not necessary;
4. a timetable for completion of the corrective action steps;
5. a description of monitoring to be performed to ensure that the steps are taken
6. the responsible party for the CAP

SANCTIONS (REMEDIES FOR NON-COMPLIANCE WITH AUDIT REQUIREMENTS)

1. Disallow the cost of the audit
2. Withhold a percentage of the contract funding until the audit is completed satisfactorily and/or audit resolution is achieved.
3. Withhold or disallow administrative/overhead costs until the audit is completed satisfactorily and/or audit resolution is achieved.
4. Suspend subsequent contract funding until the audit is completed satisfactorily and/or the provider has demonstrated the ability and/or willingness to comply with these contractual audit requirements.

AUDIT REQUIREMENTS - FOR - PROFIT ORGANIZATIONS

A for-profit organization is required to have an audit if it expends a total of **\$500,000** or more in federal funds under one or more Department of Health and Human Services (DHHS) federal awards. Title 45, CFR 74.26, incorporates the thresholds and deadlines of the Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Government, and Non-Profit Organizations*, but provides for-profit organizations with two options regarding the type of audit that will satisfy the audit requirements:

1. An audit made in accordance with generally accepted *Government Auditing Standards* (The Yellow Book). revised: or
2. An audit that meets the requirements contained in OMB Circular A-133.

A for-profit organization **is required** to have an audit, in accordance with the above audit requirements, if it expends a total of **\$500,000** or more of federal awards directly or indirectly during its fiscal year.

If a for-profit organization expends **total federal awards of less than \$500,000** during its fiscal year, it is exempt from these audit requirements, but is required to maintain auditable records of federal or state funds that supplement such awards. Records must be available for review by appropriate officials.

GENERAL AUDIT PROVISIONS- FOR-PROFIT ORGANIZATIONS

A for-profit organization is responsible for obtaining the necessary audit and securing the services of a certified public accountant or other independent governmental auditor. Federal regulations preclude public accountants licensed in the Commonwealth of Pennsylvania from performing audits of federal awards.

The Commonwealth reserves the right for state and federal agencies, or their authorized representatives, to perform financial and/or performance audits if deemed necessary by the Commonwealth or federal agencies. Any such additional audit work can incorporate the work already performed by the subrecipient's auditor. Any additional work authorized or performed by the federal or state agency will be borne by those agencies at no additional expense to the subrecipient.

If it is decided that an audit of this contract will be performed, the subrecipient will be given advance notice. The subrecipient shall maintain books, records, and documents that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with the contract terms and conditions. The subrecipient agrees to make available, upon reasonable notice, at the office of the subrecipient, during normal business hours, for the term of this contract and the retention period set forth in this Audit Clause, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative.

The subrecipient shall maintain books, records, and documents related to this contract for a period of four years from the contract expiration date, until all questioned costs or activities have been resolved to the satisfaction of the Commonwealth, or as required by applicable federal laws and regulations, whichever is longer. Any records that support the services provided, that the fees earned are in accordance with the contract, and that the subrecipient has complied with

contract terms and conditions must be maintained. The subrecipient agrees to make available, upon reasonable notice, at the office of the subrecipient, during normal business hours, for the term of this contract and the retention period set forth in this Audit Clause, any of the books, records, and documents for inspection, audit, or reproduction by any state or federal agency or its authorized representative.

Audit working papers and audit reports must be retained by the subrecipient's auditor for a minimum of *three* years from the date of issuance of the audit report, unless the subrecipient's auditor is notified in writing by the Commonwealth, or the cognizant or oversight federal agency, to extend the retention period. Audit working papers will be made available, upon request, to authorized representatives of the Commonwealth, or the oversight agency, the federal funding agency, or the General Accounting Office.

Records that relate to litigation of the settlement of claims arising out of performance or expenditures under this contract to which exception has been taken by the auditors shall be retained by the subrecipient or provided to the commonwealth at the PDA's option until such litigation, claim, or exceptions have reached final disposition.

Except for documentary evidence delivered pursuant to litigation or the settlement of claims arising out of the performance of the contract, the subrecipient may, in fulfillment of his obligation to retain records as required by this Audit Clause, substitute photographs, microphotographs, or other authentic reproductions of such records after the expiration of *two* years following the last day of the month of reimbursement to the contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Commonwealth.

All audits shall be performed in accordance with the generally accepted Government Auditing Standards (The Yellow Book) as published by the Comptroller General of the United States.

The Provider will be subject to on site fiscal and program monitoring.

As Applicable, the provider shall have subcontractors obtain audits of their contracts in accordance with the applicable Federal, State and County audit requirements. The provider shall follow up on all disclosed findings and questioned costs in the audit reports. The provider shall retain audits for a period of 4 years after termination of the provider's contract with the subcontractor or until resolution of any audit exceptions or other claims or actions involving a subcontractor.

SUBMISSION OF AUDIT REPORTS TO THE AGENCY **REQUIRED REPORTS**

Submit federally required audit reports in accordance to OMB Circular A0133, Subsection .320, Report Submission. Include the following documentation to the Monroe County Area Agency on Aging within 120 days of the close of the fiscal year.

1. Data Collection Form;
2. Financial statements and a Schedule of Expenditures of Federal Awards (SEFA);
3. Auditor's reports on the financial statements, the SEFA, internal control, and compliance, as well as a schedule of prior audit findings;

4. Summary schedule of prior audit findings;
5. Corrective Action Plan; and
6. Management letter comments.

PERIOD SUBJECT TO AUDIT

A federally required audit, made in accordance with OMB Circular A-133, encompasses the fiscal period of the auditee. Therefore, the period of the federally required audit may differ from the official reporting period as specified in this agreement.

CORRECTIVE ACTION PLAN

The provider shall prepare a corrective action plan (CAP) to address all findings of noncompliance, internal control weaknesses, and/or reportable conditions disclosed in the audit report. For each finding noted, the CAP should include:

1. a brief description identifying the findings;
2. whether the auditee agrees with the finding;
3. the specific steps to be taken to correct the deficiency or specific reasons why action is not necessary;
4. a timetable for completion of the corrective action steps;
5. a description of monitoring to be performed to ensure that the steps are taken
6. the responsible party for the CAP

SANCTIONS (REMEDIES FOR NON-COMPLIANCE WITH AUDIT REQUIREMENTS)

1. Disallow the cost of the audit
2. Withhold a percentage of the contract funding until the audit is completed satisfactorily and/or audit resolution is achieved.
3. Withhold or disallow administrative/overhead costs until the audit is completed satisfactorily and/or audit resolution is achieved.
4. Suspend subsequent contract funding until the audit is completed satisfactorily and/or the provider has demonstrated the ability and/or willingness to comply with these contractual audit requirements.

ATTACHMENT D
LOBBYING CERTIFICATION

PROVIDER NAME: _____

I CERTIFY TO THE BEST OF KNOWLEDGE AND BELIEF, THAT:

(1) No federal appropriated funds have been paid or will be paid by or on behalf of the PROVIDER, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this contract, grant, loan or cooperative agreement, the PROVIDER shall complete and submit STANDARD FORM-LLL, "DISCLOSURE OF LOBBYING ACTIVITIES," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award document for all sub awards at all tiers (including subcontracts, subgrants, and the contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under § 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

Authorized Signature

Date

Name Printed

Title (Please Print or Type)

Standard Form-LLL (Disclosure of Lobbying Activities). Please check appropriate line:

_____ FORM-LLL NOT APPLICABLE

_____ FORM-LLL IS ATTACHED

ATTACHMENT E

ASSURANCE OF COMPLIANCE

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE IX OF THE EDUCATION AMENDMENTS OF 1974 AND THE AGE DISCRIMINATION ACT OF 1975

The PROVIDER provides this assurance in consideration of and for the purpose of obtaining federal grants, loans, contracts, property, discounts or other federal financial assistance from the Department of Health and Human Services

THE PROVIDER HEREBY AGREES THAT IT WILL COMPLY WITH:

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 Regulation 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 Regulation, 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 PROVIDER receives Federal financial assistance from the Agency.

2. Section 504 of the Rehabilitation Act of 1974 (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 Regulation, no otherwise qualified handicapped individual in the United States shall solely by reason of his handicap, be excluded from participation in ,be denied the benefits or, or be subjected to discrimination under any program or activity for which the PROVIDER receives Federal Financial assistance from the AGENCY.

3. Title IX of the Educational Amendments of 1972 (Pub. L. 92-318) as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 86) to the end that, in accordance with Title IX and the Regulation, 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 PROVIDER received Federal financial assistance from the AGENCY.

4. The Age Discrimination Act of 1975 (Pub. L.94-135), as amended and all requirements imposed by or pursuant to the Regulation 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 Regulation, 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 PROVIDER received Federal financial assistance form he AGENCY.

The PROVIDER agrees that compliance with this assurance constitutes a condition of continued receipt of federal financial assistance, and that is binding upon the PROVIDER, 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 PROVIDER by the AGENCY, this assurance shall obligate the PROVIDER 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 PROVIDER for the period during which it retains ownership or possession of the property. The PROVIDER further recognizes and agrees that the United States shall have the right to seek judicial enforcement of this assurance.

The person or persons whose signature(s) appear(s) below is/are authorized to sign this assurance, and commit the PROVIDER to the above provisions.

Date

Signature of Authorized Official

Name Printed

Title of Authorized Official

Organization Name

Address

ATTACHMENT F

Scope of Service

Personal Emergency Response System (PERS)

1. Introduction

The County of Carbon (hereinafter referred to as “County”) is seeking proposals from qualified Providers (hereinafter referred to as “Provider”) of PERS, an electronic device which enables certain high-risk Consumers (hereinafter referred to as “Consumers”) to receive help in the event of an emergency. PERS services are limited to those Consumers who live alone or who are alone for significant parts of the day, have a significant risk for falls, an unstable medical condition and have no regular caretaker for extended periods of time. The Consumer must be cognitively and functionally capable of using this device. The Carbon County Area Agency on Aging (hereinafter referred to as “AAA”) shall be the service administrator.

2. Aging Program Directive (APD)/Federal/State Regulatory References

Providers of services outlined in this Scope of Service shall comply with all Federal and State directives listed below:

1. Pennsylvania Department of Aging APD 15-01-08: Aging Service Policy and Procedure Manual Chapter VIII: OPTIONS, attached hereto and referenced as “Exhibit A”.
2. National Electric Code (Appendix F), attached hereto and referenced as “Exhibit B”.

This Scope of Service is subject to change based on changes to the above directive(s).

3. Contract

1. County shall award contracts to multiple Providers.
2. Awarded Providers shall execute an agreement with the County. Contracts shall not be required nor executed with Consumers.
3. The initial contract term shall commence on the date of the Notice to Proceed and continue for (3) years with no lapse in service. Price shall remain firm for the initial contract term. Subject to negotiation of terms and upon mutual consent of the parties, the term of the agreement may be extended for (2) additional (1) year terms.

4. Equipment Standards

1. All PERS units must be certified as meeting the standards for safety and use as outlined in the National Electric Code, NEC requirements. See attachment J.
2. The PERS will be leased from an emergency medical response system Provider. As part of the monthly charge, the Provider shall, either directly or through subcontracting with another Provider, provide for ongoing provision of on-line emergency response center

services. This shall include:

- a. Response to Consumer testing and daily Provider testing
 - b. Self-auditing and quality control
 - c. Repair and replacement
 - d. 24-hour staffing by trained operators of the emergency response center 365 days a year
 - e. Each system shall include:
 - i. Installation in the Consumer's home, including any needed phone jack modifications and devices at no charge to Consumer or County
 - ii. Two-way voice communication
 - iii. Inactivity timer
 - iv. Average range
 - v. Waterproof, portable help button
 - vi. Ability to self-test on-line status of all functions
3. Consumers shall be offered options for:
- a. Wrist band or necklace medical devices
 - b. Fall detection
 - c. Cellular or landline service

5. Consumer Qualifications

1. Personal Emergency Response Systems are limited to those Consumers that have one or more of the following conditions/situations:
 - a. Live alone
 - b. Are alone for significant parts of the day
 - c. Have no regular caretaker for extended periods of time
 - d. Would otherwise require extensive routine supervision
 - e. Limited or absent formal or informal support systems
 - f. Documented history of falls within the last six months that resulted in an injury that required medical or emergency care
 - g. Care access challenges (for example, RN shortage, rural access issues, etc.).

2. The use of Personal Emergency Response Systems will be authorized when all other methods such as informal caregivers, infant monitoring systems, and other less restrictive technology have been demonstrated to be ineffective or unavailable for Consumer safety.

6. Performance Evaluation

1. During the course of the contract year, AAA will monitor the Provider to validate SAMS Service Delivery and to ensure that the Provider is following the requirements of the Scope of Service. The priorities for evaluation shall be:
 - a. Compliance on items that potentially pose a direct threat to the safety of Consumers and the quality of their care.
 - b. Compliance on items that potentially pose an indirect threat to the quality of care for Consumers and/or pose a risk management problem for the County.
 - c. Compliance on administrative items.

2. Providers found to be not compliant with the Scope of Service will require an action plan and progressive intervention.
3. Consumer Satisfaction: Surveys of Consumers may be conducted by the AAA. Consumers from each Provider will be randomly selected to be surveyed. The expectation is that ninety (90) percent of the surveyed Provider's Consumers will be satisfied with their service.

7. Initiating Service

1. Referrals for service will be at the discretion of a Care Manager. The Provider acknowledges that it is not the sole Provider of services. The AAA reserves the right to order service from another Provider if service cannot be provided.
2. The actual amount of service ordered by the Care Manager shall be at the discretion of the AAA and shall depend upon the demand/need for service.
3. The actual number of units of service and the number of Consumers to be served will vary from month to month based on the Consumers' activity/status.
4. The final decision-making authority to initiate, continue, terminate, increase or decrease service will rest solely with a Care Manager.
5. To insure responsive delivery of services, the Provider and Care Manager must maintain close communication.
 - a. All changes will be authorized by the Care Manager.
 - b. Care Managers will be notified when there is any deviation from the service ordered.
6. All services provided must be consistent with care plan authorized by the Care Manager.

8. Installation

1. All Consumers will receive units with smoke detectors unless they reside where building regulations prohibit their use.
2. It shall be the Provider's responsibility to deliver and install, at no charge to the Consumer or County, each Personal Emergency Response System unit that is leased. The Provider agrees to complete installation within five (5) working days of receipt of the service order. Services will be billed in the month that PERS units are ordered and installed.
3. The Care Manager will notify the Provider by phone of a request for installation. The Provider shall arrange with the Consumer a mutually convenient appointment within five (5) working days of the Provider's notification by the Care Manager.

4. The Provider shall notify the Care Manager of the installation appointment and to confirm that installation has been completed.
5. The Provider immediately shall notify the Care Manager if it is unable to schedule or complete an installation within the required time frame.
6. The Provider shall provide all parts and equipment necessary for installing a leased emergency medical response system unit into a functioning telephone or cellular system.
7. The Provider shall instruct the Consumer in the use and maintenance of the PERS and shall provide the Consumer with simple written instructions, including how to report a malfunction of the PERS.
8. The Provider shall, upon request of the Consumer or Care Manager, provide additional follow-up instructions to the Consumer on operating and maintaining the PERS.
9. The Provider shall forward to the Care Manager within five (5) working days of the installation either by mail, e-mail, or by facsimile a form signed by a Provider representative or employee and by the Consumer or Consumer's representative confirming the date of the installation and the Consumer's understanding of the use and maintenance of the PERS.
10. The Provider shall provide the Care Manager, Consumers, and other persons (as needed to assure care), instructional materials and orientation in the operation of the PERS, stated in simple and understandable language.
11. If any applicable regulatory, industry, or manufacturer standards are changed resulting in improvements or updating of equipment, the Care Manager shall be notified and each on-line Consumer with leased equipment shall be provided immediately with said new equipment.
12. PERS equipment will be maintained in proper working order and guaranteed by the Provider.

9. Maintenance of Equipment & Service

1. Provider shall maintain all installed PERS in proper working order.
2. The Provider shall make provisions to insure that each installed PERS is operating properly at least once every 24 hours.
3. Provision for the daily testing will preferably be automated and shall cause the least possible inconvenience for the Consumer.
4. The Provider shall follow-up with the Consumer and notify the Care Manager within 24 hours, or the next business day of any PERS that is not operating properly.

Malfunctioning equipment shall be repaired or replaced within 24 hours of notification or identification.

10. Suspension & Termination of Service

1. The decision to remove a PERS is at the sole discretion of the Care Manager. For all PERS removals, notification will be by telephone or e-mail from the authorized Care Manager. Authorization to terminate PERS service will be sent to the Provider on the same day as a telephone notification.
 - a. If the Provider is notified directly by a Consumer's family or other representative to remove the PERS, authorization must first be obtained from the Care Manager.
2. When a Consumer with a PERS no longer requires such services, regardless of the reason, the Care Manager will discuss with appropriate staff as needed and contact the Provider so that the PERS may be transferred or removed.
3. When a Consumer's services are suspended because of the Consumer's admission to the hospital, the Care Manager will notify and/or authorize the Provider to take the unit off-line. Services will be resumed to the Consumer only after the Care Manager notifies the Provider.
 - a. Payment for leased equipment will be made at the standard unit price as long as a unit remains in the home of a Consumer.
4. The Provider shall disconnect/remove a PERS free of charge from a Consumer's residence within five (5) working days of notification by the Care Manager.

11. Emergencies

Providers will have a written contingency plan outlining emergency operation procedures. Provider shall maintain, either directly or through subcontract, a 24-hour Emergency Response Center staffed with trained emergency response operators. The Emergency Response Center shall perform the activities that follow:

1. Respond immediately to any and all signals from Consumer's PERS equipment and maintain appropriate contact until termination of the emergency situation.
2. Receive, acknowledge, and establish immediate 2-way communication in responding to emergency signals from Consumers. The Provider, immediately upon receiving a signal from the individual's PERS, will retrieve the Consumer's automated data records, establish immediate two-way voice contact directly with the Consumer via the incoming signal, and contact the representative or take other emergency action as prescribed in the Consumer's record.
3. Be capable of responding to multiple emergency signals simultaneously.
4. Notify a third party, individual-designated representative, (e.g., neighbor, police, Emergency Medical System (EMS) etc.), to respond to an emergency via immediate telephone contact and without interrupting or terminating direct voice contact with the

Consumer.

5. Provider shall verify resolution of the alert situation, document the alert, for future reference and trending of alerts, and notify the Care Manager within 24 hours of the next business day.
6. The emergency response operator will monitor the provision of emergency service to verify that it has been provided and that the emergency situation no longer exists at the Consumer's residence.

12. Billing/Payment

1. Provider shall invoice the County on a Summary Basis monthly. Billing cycle shall be the first day of each month through the last day of each month. Monthly invoice must be received by the AAA no later than the 10th day of the following month. The invoice shall indicate the Consumer information as provided by AAA, dates and types of service, including options. All invoices on a Summary Basis must show credits within the monthly billing cycle.
2. Monthly billing shall be mailed to:
Carbon County Area Agency on Aging
401 Delaware Ave.
Palmerton, PA 18071
3. Payments shall be made to Providers within thirty (30) days of receipt of undisputed monthly invoice.
4. Provider shall not charge Consumers or County an activation fee or cancellation fee.
5. Days and times schedules for Personal Emergency Response services must be consistent with the Care Plan provided by the AAA. The monthly fee for this service will include:
 - a. Installation, repair or replacement and removal of equipment
 - b. Rental of the equipment
 - c. Training of the Consumer and/or their caregivers
 - d. Monitoring services by a trained professional
 - e. Included as part of the monthly PERS charge, the Provider shall, either directly or through subcontractor, provide for ongoing provision of on-line emergency response center services for each individual authorized. This shall include response to Consumer self-testing as well as daily Provider testing, self-auditing, quality control and staff training.
6. One (1) unit PERS Monthly Fee equals one (1) monthly fee.
7. Payment will be denied if service is provided in a fashion not specified in the care plan, without adequate justification or the Care Manager approval.

13. Staffing and Administrative Policy

1. Provider Staffing & Qualifications

a. Line Staff employees shall possess:

- i. Ability to work under supervision as an employee of the agency.
- ii. Ability to communicate orally with the Consumer and resource personnel with whom they must work, and both orally and in writing with their Supervisor.
- iii. Ability to read, write, follow written instructions and to converse easily on the telephone.
- iv. Training and/or paid or volunteer experience of one year or more, specifically related to the skills required to perform as an emergency response center employee.
- v. Ability to provide references as follows:
 - Two verifiable work references; or
 - One verifiable work reference indicating a minimum length of employment of one year; or two references, total, from a supervisor and/or instructors from an acceptable training program.

2. Supervisors

- a. Supervisors shall be capable of demonstrating and teaching all job skills needed to perform all aspects of the jobs of their employees.
- b. Supervisors shall receive regular supervision by a designated administrative staff person.
- c. It is expected that there will be a Supervisor available during normal working hours.

3. Administrative Staff

- a. Adequate administrative staff shall be employed to ensure the sufficient and effective provision of service under the contract.

4. Consultant Staff

- a. Additional suitable staff shall be available for consultation regarding response, operation, training, or other matters requiring professional input.

5. General

- a. The Provider will maintain sound personnel policies to minimize personnel turnover which would adversely affect the delivery of service.

6. Training

- a. In-service training sessions must be offered to all direct Consumer contact employees. Subject areas covered should relate to relevant aspects of service delivery, trends or advances in the field, or identified problems or gaps in knowledge. Programs on provider policies and procedures are necessary but should not constitute the majority of any session.
- b. The Provider will use and have on file, written training materials and procedures.
- c. For staff with demonstrated personal characteristics and abilities, training in how

to work with Consumers having special mental health or other complex needs is encouraged.

7. Limited English Proficiency (LEP)

- a. The Provider shall take reasonable steps to ensure that persons with LEP have access to services.
- b. Language assistance shall be provided through use of competent multi-lingual staff, staff interpreters, contracts or formal arrangements with local organizations providing interpretation or translation services, or technology and telephonic interpretation services.

8. Confidentiality

a. Consumer Confidentiality

- i. Security of Consumer files shall be maintained.
- ii. Every precaution will be pursued to maintain confidentiality of Consumer information, particularly when sharing with other Providers.
- iii. Only those portions of the care plan, which pertain to a specific service or Provider, will be communicated to the appropriate parties involved in providing service to the Consumer.
- iv. Consumer permission must be obtained in writing, in order to share this information.

b. Consumer Records

- i. Provider will maintain standardized individual files for each Consumer. The record keeping system must ensure uniformity and consistency in documentation of the service provision.
- ii. The Consumer's record must contain copies of the following information:
 - SAMS service order
 - The start date of service;
 - Documentation of:
 - Each visit made to the PERS Consumer;
 - Each activation of the Consumer's PERS;
 - Worker's comments and observations concerning the Consumer's condition and his/her response to service, including the reporting of changes and/or problems to the supervisor. Changes and/or problems must be acknowledged by the supervisor;
 - Statements of follow-up action taken by the supervisor, including reporting to the Care Manager.

9. Back-Up Services

- a. The Provider will have a sufficient number of designated alternate installers to deliver service in the absence of the regular installer.
- b. The Provider's emergency service center shall have a number of designated alternate personnel to deliver service in the absence of regular personnel.

10. Change in Consumer Status

- a. Changes in Consumer functioning, health or situation will be reported to the Care Manager as soon as possible, but no later than the end of the working day on which the change is noted.

11. Personnel Policies

- a. The Provider will:
 - i. Notify AAA in writing of changes at the administrative level in advance, if known, or immediately upon such change.
 - ii. Maintain sound personnel policies structured to minimize personnel turnover, which would adversely affect the delivery of service.
 - iii. Assure availability of a staff person to accept phone communication during normal business hours.

12. Exclusions

- a. It is prohibited for workers to accept gifts, bequests, loans, and gratuities from Consumers. This prohibition will appear in the Provider's signed agreements with staff, work rules, handbooks, training, job descriptions, and personnel policies.
- b. Collection of voluntary contributions is specifically prohibited under this contract.
- c. Workers will not possess keys to a Consumer's home.
- d. Transporting Consumers in a personal vehicle is prohibited.
- e. Money management such as budgeting, paying bills and cashing checks is prohibited.
- f. Violation of these rules is cause for dismissal by the Provider. Failure of the Provider to enforce this prohibition is cause for termination of the contract.

13. Electronic Information Management

- a. The Provider will have the capacity/ability to retrieve and submit data, information, reports and other communication through electronic internet capabilities within a timeframe specified by AAA.
- b. Failure to receive or read AAA communications sent to the Provider's e-mail address in a timely manner does not absolve the Provider from knowing, responding to or complying with the content of that communication.

14. Responsibilities/Expectations of the Program Office (Carbon County Area Agency on Aging)

AAA will support the Provider in meeting service standards and requirements by providing the following:

1. Timely communication and written correspondence regarding mandated applicable Pennsylvania Department of Aging and County requirements, and any changes to these requirements, that occurs during the contract period;
2. Program monitoring and evaluation to assure compliance with Pennsylvania Department of Aging and County requirements specified in the terms of this contract;
3. Timely communication and written correspondence regarding the outcome of program monitoring and evaluation activities;
4. Technical assistance as needed regarding program requirements.

ATTACHMENT G
FORM OF PROPOSAL

The undersigned offers, subject to the terms and conditions of the annexed general specifications and requirements, agrees to provide to the County Personal Emergency Response Systems for High-Risk Consumers in said County as specified and agrees if its proposal is accepted, to abide by and conform to and in all respects comply with the annexed general specifications and requirements.

Rates for options services will be no higher than Provider's private pay fee schedule.
As a political subdivision of the Commonwealth of PA, The County of Carbon is exempt from Federal Excise Taxes and Pennsylvania Sales Taxes. Net prices as shown in the Proposal and net invoices shall exclude such Federal and State taxes.

Base Cost per Month for Landline System \$ _____

Base Cost per Month for Cellular System \$ _____

Cost per Month for Fall Detection Option \$ _____

Is the cost per month the same for bracelet and necklace devices? YES _____ NO _____

If no, please specify: _____

What is the range of your base station? _____

List any cell phone/landline carriers that are not compatible with your PERS: _____

List additional options Consumers may choose and cost per month:

Option: _____ \$ _____ Option: _____ \$ _____

Option: _____ \$ _____ Option: _____ \$ _____

Provider acknowledges receipt of the following Addenda (if applicable):

_____ # _____ # _____ # _____

(Signature)

(Company Name)

(Name Printed)

(Address)

(Title)

(Address)

(Phone)

(E-Mail)

Only proposals signed by Principal of Company or Authorized Agent will be accepted.

ATTACHMENT H

INSURANCE and WORKERS' COMPENSATION CERTIFICATE

ATTACHMENT I

HIPAA - BUSINESS ASSOCIATE AGREEMENT

Minimum Legal Requirements

I. PREAMBLE

Pursuant to the Health Insurance Portability and Accountability Act ("HIP AA") of 1996, and its implementing regulation, the Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,462 et seq. (Dec. 28, 2000) (hereinafter the "HIP AA Privacy Rule"), Carbon County ("Covered Entity") , RN ("Business Associate") (jointly "the Parties") wish to enter into an Agreement that addresses the requirements of the HIP AA Privacy Rule with respect to "business associates," as that term is defined in the HIP AA Privacy Rule.

Specifically, this Agreement is intended to ensure that the Business Associate will establish and implement appropriate safeguards (including certain administrative requirements) for "Protected Health Information" the Business Associate may create, receive, use, or disclose in connection with certain functions, activities, or services (collectively "services") to be provided by Business Associate to Covered Entity.

The Parties acknowledge and agree that in connection with the services to be provided, Business Associate will create, receive, use or disclose Protected Health Information as set forth in the HIP AA Privacy Rule and as used herein. Protected Health Information ("PHI") is defined as individually identifiable health information maintained or transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials that relate to: (i) the past, present, or future physical or mental health or condition of an individual; (ii) the provision of health care to an individual; or (iii) the past, present, or future payment for the provision of health care to an individual. PHI does not include health information that has been re-identified in accordance with the standards for de-identification provided for in the HIPAA Privacy Rule.

In connection with Business Associate's creation, receipt, use of disclosure of PHI, Business Associate and Covered Entity agree as follows:

II. GENERAL TERMS

a. All capitalized term of this Agreement shall have the meanings set forth in the HIPAA Privacy Rule, unless otherwise defined herein.

b. In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Privacy Rule, as may be expressly amended from time to time by the Department of Health and Human Services (HHS) or as a result of interpretations by HHS, a court, or another regulatory agency with authority over the Parties, the interpretation of HHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.

c. Where provisions of this Agreement are different from those mandated by the HIPAA Privacy Rule, but are nonetheless permitted by the Rule, the provisions of the Agreement shall control.

d. Except as expressly provided in the HIPAA Privacy Rule or this Agreement, this Agreement does not create any rights in third parties.

III. SPECIFIC REQUIREMENTS

a. Business Associate agrees to create, receive, use, or disclose PHI only in a manner that is consistent with this Agreement or the HIP AA Privacy Rule and only in connection with providing the services to Covered Entity identified *in the agreement dated* _____. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity if:

(i) the use relates to:

- (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or
- (2) data aggregation services relating to the health care operations of the Covered Entity; or

(ii) the disclosure of information received in such capacity will be made in connection with a function, responsibility, or service identified in (i) (1) and such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

b. Business Associate shall include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the agents or subcontractors, the same restrictions and conditions on the use and disclosure of PHI that are set forth in this Agreement.

c. Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Agreement.

d. Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Agreement.

e. In accordance with 45 C.F.R. § 164.524 of the HIPAA Privacy Rule, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity (who then will share the PHI with the individual), by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location.

f. Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.R.F. § 164.528 of the HIPAA Privacy Rule.

g. Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIP AA Privacy Rule.

h. Upon the termination or expiration of this Agreement, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if return or destruction is not feasible.

i. Business Associate shall make available to the HHS or its agents the Business Associate's internal practices, books and records relating to the use and disclosure of PHI.

j. The Parties agree that Covered Entity shall have the right to terminate this Agreement or seek other remedies if Business Associate violates a material term of this Agreement.

Signature of Authorized Representative

Company Name

Name Printed

Address

Date

Address

Informative Annex F Availability and Reliability for Critical Operations Power Systems; and Development and Implementation of Functional Performance Tests (FPTs) for Critical Operations Power Systems

This informative annex is not a part of the requirements of this NFPA document but is included for informational purposes only.

I. Availability and Reliability for Critical Operations Power Systems. Critical operations power systems may support facilities with a variety of objectives that are vital to public safety. Often these objectives are of such critical importance that system downtime is costly in terms of economic losses, loss of security, or loss of mission. For those reasons, the availability of the critical operations power system, the percentage of time that the system is in service, is important to those facilities. Given a specified level of availability, the reliability and maintainability requirements are then derived based on that availability requirement.

Availability. Availability is defined as the percentage of time that a system is available to perform its function(s). Availability is measured in a variety of ways, including the following:

$$\text{Availability} = \frac{MTBF}{MTBF + MTTR}$$

where:

MTBF = mean time between failures

MTTF = mean time to failure

MTTR = mean time to repair

See the following table for an example of how to establish required availability for critical operation power systems:

Availability	Hours of Downtime*
0.9	876
0.99	87.6
0.999	8.76
0.9999	0.876
0.99999	0.0876
0.999999	0.00876
0.9999999	0.000876

*Based on a year of 8760 hours.

Availability of a system in actual operations is determined by the following:

- (1) The frequency of occurrence of failures. Failures may prevent the system from performing its function or may cause a degraded effect on system operation. Frequency of failures is directly related to the system's level of reliability.
- (2) The time required to restore operations following a system failure or the time required to perform maintenance to prevent a failure. These times are determined in part by the system's level of maintainability.
- (3) The logistics provided to support maintenance of the system. The number and availability of spares, maintenance personnel, and other logistics resources (refueling, etc.) combined with the system's level of maintainability determine the total downtime following a system failure.

Reliability. Reliability is concerned with the probability and frequency of failures (or lack of failures). A commonly used measure of reliability for repairable systems is *MTBF*. The equivalent measure for nonrepairable items is *MTTF*. Reliability is more accurately expressed as a probability over a given duration of time, cycles, or other parameter. For example, the reliability of a power plant might be stated as 95 percent probability of no failure over a 1000-hour operating period while generating a certain level of power. Reliability is usually defined in two ways (the electrical power industry has historically not used these definitions):

- (1) The duration or probability of failure-free performance under stated conditions
- (2) The probability that an item can perform its intended function for a specified interval under stated conditions [For nonredundant items, this is equivalent to the preceding definition (1). For redundant items this is equivalent to the definition of mission reliability.]

Maintainability. Maintainability is a measure of how quickly and economically failures can be prevented through preventive maintenance, or system operation can be restored following failure through corrective maintenance. A commonly used measure of maintainability in terms of corrective maintenance is the mean time to repair (*MTTR*). Maintainability is not the same thing as maintenance. It is a design parameter, while maintenance consists of actions to correct or prevent a failure event.

Improving Availability. The appropriate methods to use for improving availability depend on whether the facility is

being designed or is already in use. For both cases, a reliability/availability analysis should be performed to determine the availability of the old system or proposed new system in order to ascertain the hours of downtime (see the preceding table). The AHJ or government agency should dictate how much downtime is acceptable.

Existing facilities: For a facility that is being operated, two basic methods are available for improving availability when the current level of availability is unacceptable: (1) Selectively adding redundant units (e.g., generators, chillers, fuel supply) to eliminate sources of single-point failure, and (2) optimizing maintenance using a reliability-centered maintenance (RCM) approach to minimize downtime. [Refer to NFPA 70B-2010, *Recommended Practice for Electrical Equipment Maintenance*.] A combination of the previous two methods can also be implemented. A third very expensive method is to redesign subsystems or to replace components and subsystems with higher reliability items. [Refer to NFPA 70B.]

New facilities: The opportunity for high availability and reliability is greatest when designing a new facility. By applying an effective reliability strategy, designing for maintainability, and ensuring that manufacturing and commissioning do not negatively affect the inherent levels of reliability and maintainability, a highly available facility will result. The approach should be as follows:

- (1) *Develop and determine a reliability strategy* (establish goals, develop a system model, design for reliability, conduct reliability development testing, conduct reliability acceptance testing, design system delivery, maintain design reliability, maintain design reliability in operation).
- (2) *Develop a reliability program*. This is the application of the reliability strategy to a specific system, process, or function. Each step in the preceding strategy requires the selection and use of specific methods and tools. For example, various tools can be used to develop requirements or evaluate potential failures. To derive requirements, analytical models can be used, for example, quality function development (a technique for deriving more detailed, lower-level requirements from one level to another, beginning with mission requirements, i.e., customer needs). This model was developed as part of the total quality management movement. Parametric models can also be used to derive design values of reliability from operational values and vice versa. Analytical methods include but are not limited to things such as thermal analysis, durability analysis, and predictions. Finally, one should evaluate possible failures. A failure modes and effects criticality analysis (FMECA) and fault tree analysis (FTA) are two methods for evaluating possible failures. The mission facil-

ity engineer should determine which method to use or whether to use both.

- (3) *Identify Reliability Requirements*. The entire effort for designing for reliability begins with identifying the mission critical facility's reliability requirements. These requirements are stated in a variety of ways, depending on the customer and the specific system. For a mission-critical facility, it would be the mission success probability.

II. Development and Implementation of Functional Performance Tests (FPTs) for Critical Operations Power Systems Development of FPT

(1) Submit Functional Performance Tests (FPTs). System/component tests or FPTs are developed from submitted drawings, systems operating documents (SODs), and systems operation and maintenance manuals (SOMMs), including large component testing (i.e., transformers, cable, generators, UPS), and how components operate as part of the total system. The commissioning authority develops the test and cannot be the installation contractor (or subcontractor).

As the equipment/components/systems are installed, quality assurance procedures are administered to verify that components are installed in accordance with minimum manufacturers' recommendations, safety codes, and acceptable installation practices. Quality assurance discrepancies are then identified and added to a "commissioning action list" that must be rectified as part of the commissioning program. These items would usually be discussed during commissioning meetings. Discrepancies are usually identified initially by visual inspection.

(2) Review FPTs. The tests must be reviewed by the customer, electrical contractors, quality assurance personnel, maintenance personnel, and other key personnel (the commissioning team). Areas of concern include, among others, all functions of the system being tested, all major components included, whether the tests reflect the system operating documents, and verification that the tests make sense.

(3) Make Changes to FPTs as Required. The commissioning authority then implements the corrections, questions answered, and additions.

(4) FPTs Approval. After the changes are made to the FPTs, they are submitted to the commissioning team. When it is acceptable, the customer or the designated approval authority approves the FPTs. It should be noted that even though the FPT is approved, problems that arise during the test (or areas not covered) must be addressed.

Testing Implementation for FPTs. The final step in the successful commissioning plan is testing and proper execution of system-integrated tests.

(1) Systems Ready to Operate. The FPTs can be implemented as various systems become operative (i.e., test for the generator system) or when the entire system is installed. However, the final "pull the plug" test is performed

only after all systems are completely installed. If the electrical contractor (or subcontractor) implements the FPTs, a witness must initial each step of the test. The electrical contractor cannot employ the witness directly or indirectly.

(2) Perform Tests (FPTs). If the system fails the test, the problem must be resolved and the equipment or system retested or the testing requirements re-analyzed until suc-

cessful tests are witnessed. Once the system or equipment passes testing, it is verified by designated commissioning official.

(3) Customer Receives System. After all tests are completed (including the “pull the plug” test), the system is turned over to the customer.