

Open Solicitation Plan For Open Solicitation #1160876 – Evidence-Based Health Promotion Programming

As required by Montgomery County Procurement Regulations, Code of Montgomery County Regulations (COMCOR), Section 11B.00.01, et seq., Section 4.1.6.3 (a), the Department of Health and Human Services (DHHS) / Aging and Disability Services is submitting this Open Solicitation Plan for approval by the Director, Office of Procurement.

Section 4.1.6.3 Procedure

- (1) Public Notice – Notice for this solicitation will be posted on the Montgomery County, Office of Procurement website. Additionally, DHHS will send a copy of the notice to current providers, whose contracts will be replaced by contracts awarded under this Open Solicitation.

- (2) Application Process – The DHHS Contract Management Team (CMT) will post a copy of the solicitation packet for this Open Solicitation at: <https://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. The solicitation packet includes the following: 1) the Notice to Vendors that summarizes this Open Solicitation; 2) the Instructions and Minimum Qualifications document for this Open Solicitation; 3) the Application; and 4) the Pre-approved Form Contract including the Scope of Services and General Conditions of Contract Between County and Contractor and other attachments.

- (3) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum requirements that applicants must meet. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the solicitation criteria.

- (4) All applicants meeting the minimum qualifications listed in the Instructions and Minimum Qualifications document of the Open Solicitation and are found to be responsible will be eligible to receive a contract to provide the services described in the Open Solicitation. Referrals for services will be based on location, availability, and vendor’s ability to perform the services in the given timeframe.

- (5) Pre-Approved Form Contract – A Pre-Approved Form Contract is included in the solicitation packet. The solicitation packet also contains a description of the requirements identified on the Pre-approved Form Contract (referred to as Scope of Services). Applicants will be required to execute a contract with the County using this Pre-Approved Form Contract, including the General Conditions of Contract Between the County and Contractor (“General Conditions”), without modification.

- (6) Cost – The cost of contracts will not exceed available appropriations. Prior to encumbrance of funds for contracts awarded under this Open Solicitation, the total available appropriation for the contracts will be verified by DHHS. Funds will be

encumbered under contracts via a purchase order. The County's Health Promotion Programmer will monitor expenditures for each executed contract against the purchase order and any subsequent delivery orders that the Office of Procurement authorizes.

- (7) Cancellation – The County reserves the option to cancel this Open Solicitation at any time. Award of a contract under this Open Solicitation is subject to appropriation of funding.
- (8) Changes to Forms – The County may update the Open Solicitation Form Contract with updated versions of the forms listed below without issuing an amendment to the Open Solicitation:
 - a. General Conditions of Contract Between County & Contractor (PMMD-45);
 - b. Minority Business Program & Offeror's Representation (PMMD-90);
 - c. Minority-Owned Business Addendum to the General Conditions of Contract between County and Contractor (PMMD-91);
 - d. Minority, Female, Disabled (MFD) Person Subcontractor Performance Plan (PMMD-65); and
 - e. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor, and Wage Requirements Law Certification (PMMD-177).
 - f. Business Associate Agreement

The updated forms will be applicable to new contracts entered into after the date they are added to the open solicitation; forms attached to previously executed contracts will remain in effect for these contracts unless formally amended by contract amendment.

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NOTICE TO VENDORS

Open Solicitation #1160876 Evidence-Based Health Promotion Programming

Montgomery County, Maryland, through its Department of Health and Human Services (DHHS), Aging and Disabilities service area (A&D), is seeking applications from qualified local hospitals or County-affiliated organizations to provide evidence-based health promotion programming for individuals, 60 years of age or older, residing in Montgomery County, who have chronic medical conditions, to live longer and healthier lives.

The Older Americans Act (OAA) provides funding for disease prevention and health promotion. The program was established in 1987 to provide services to individuals, 60 years of age or older, to support a healthy lifestyle and promote healthy behaviors. Evidence-based health promotion programs designed and validated by researchers from The National Council on Aging (NCOA) offer proven ways to promote health and prevent disease among older adults.

More information on evidence-based health promotion programs can be found on the following website: <https://www.ncoa.org/resources/ebpchart/>

The purpose of an Open Solicitation under Montgomery County's Procurement Regulations is to permit acceptance of applications on a continuing basis to meet service needs. Interested parties are encouraged to submit an application along with all required materials listed in the Open Solicitation to allow for processing of a Pre-Approved Form Contract.

A complete description of the Scope of Services required is listed in the Open Solicitation packet in the Pre-Approved Form Contract. You may obtain a packet by visiting DHHS – Contract Management Team website at: <https://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>.

The County will enter into a contract with all applicants who meet the minimum qualifications as described in the Form Contract and are found to be a responsible organization. The County will sign the contract and return a copy to the applicant. The Form Contract with all Attachments will constitute the entire Contract. Please keep a copy of all these documents for your records. The applicant must sign the County's Form Contract which includes the General Conditions of Contract Between County and Contractor, as written with no modification.

Questions regarding this solicitation should be emailed to:
HHS.Open.Solicitations@montgomerycountymd.gov

INSTRUCTIONS AND VENDOR INFORMATION

The County will enter into a contract with all applicants who meet the minimum qualifications, are found to be responsible, and complete and submit the mandatory submissions described below in this document. After an applicant submits the required information and documents, the County will review the submissions and determine whether the applicant meets the minimum qualifications. If the County accepts an application, the contract will be executed, and a copy of the contract will be sent to the applicant. Please keep a copy of the entire Open Solicitation packet for your records. *Applicants are strongly encouraged to carefully review all the documents and information provided with this packet before completing and returning the Pre-Approved Form Contract. **Incomplete applications will not be processed.***

Please complete and attach all the below-listed mandatory submission/application documents and e-mail to: Healthpromotion@montgomerycountymd.gov

Or Mail: Department of Health & Human Services
401 Hungerford Drive, Rockville, Maryland 20850
Attn: Health Promotion, 4th Floor

The County makes no guarantee that any Contractor will receive programming assigned from the County under a contract resulting from this Open Solicitation. Referrals for services will be based on location, availability, and vendor's ability to perform the services in the given timeframe. Contractors will be placed on a list of current providers for evidence-based programming. Award of a contract under this Open Solicitation is subject to appropriation of funding. The County reserves the right to cancel this Open Solicitation at any time.

Questions related to open solicitation should be directed to:
HHS.Open.Solicitations@montgomerycountymd.gov

- I. Submission/Application Documents - The following items must be submitted:
- A. Application/Vendor Information Form (Attachment E)
Please complete in its entirety. Applicants must check-off profit, non-profit, or sole proprietorship designation.
 - B. Reference Information Form (Attachment D)
 - C. Insurance Certificate
A Certificate(s) of Insurance that provides evidence of meeting the insurance requirements set forth in Article VII. of the Pre-Approved Form Contract. Contact your insurance broker to obtain the Certificate.
 - D. Form Contract
The Form Contract must be filled out correctly and submitted. Please follow these steps:
 1. Sign the Form Contract – If the applicant is a corporation, an officer of the corporation with authority to sign contracts for the corporation must sign the Form Contract.

2. PLEASE DO NOT PUT A DATE IN THE PARAGRAPH AT THE TOP OF THE PAGE. ENTER A DATE ONLY IN THE SIGNATURE BLOCK.
3. Submit all the pages of the Form Contract (not just the signature page), including all attachments.

- E. General Conditions of Contract Between County & Contractor (Attachment A)
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-45.pdf>
- F. Business Associate Agreement (Attachment B)
<https://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>
- G. Minority, Female Disabled (MFD) Person Subcontractor Performance Plan
Please submit your MFD plan or request a waiver.
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf>
- H. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor.
www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf
- I. Proof of legal name
A copy of the current Maryland Business License displaying the appropriate legal name is acceptable.
- J. W-9 tax form or a copy of the Social Security card, if sole proprietorship.
- K. Proof of tax-exempt status
Determination letter from IRS, if applicable.
- L. Certificate of Good Standing from the Maryland State Department of Assessments and Taxation

II. The **minimum qualifications** for this Open Solicitation are as follows:

- A. Applicants must have a minimum of two (2) years of experience delivering one or more evidence-based health promotion programs referenced in this Solicitation and/or identified by the County as an evidence-based health promotion program suitable for older adults, or minimum of three (3) years of experience providing similar services to older adults.
- B. Must be a local Montgomery County hospital or a Montgomery County affiliated organization that is facilitated or led by trained and certified trainers to provide evidence-based health promotion programming and must meet the State of Maryland's Department of Aging Standards <https://aging.maryland.gov/> . The County will verify all applicant's submission regarding experience, education, and other qualifications. A description of your organization's layout, amenities,

accommodations including maximum capacity to provide evidence-based health promotion programs to service elderly County residents. Certification in Health Education or related field is preferred but not required.

- C. Applicants must meet the County's mandatory insurance requirements as defined under this Solicitation and must provide insurance certificates to the County which show coverage reflecting the mandatory insurance requirements.
- E. Applicants must only provide evidence-based health promotion programs and follow curriculum set forth by The National Council on Aging (NCOA).
<https://www.ncoa.org/resources/ebpchart/>
- F. Applicants must comply with applicable ethical and legal standards for protection of health information under the Health Insurance Portability and Accountability Act (HIPAA), and other federal, State and local laws and regulations governing the privacy of medical information.
- G. Applicants must allow the County to perform unannounced, on-site monitoring visits to evaluate the provision of services in accordance with the terms of the Contract.
- H. Applicants must have the ability and capacity to provide services throughout the term of the Contract.
- I. Background Clearance policy requirements for staff, subcontractors, and volunteers serving clients. At a minimum, all staff and volunteers having unsupervised contact with a vulnerable population, including the elderly, must be appropriately screened prior to providing services under the contracts resulting from this Solicitation.
<https://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>

I. BACKGROUND/INTENT

- A. Montgomery County, Maryland, through its Department of Health and Human Services (DHHS), Aging and Disabilities service area (A&D), is seeking applications from qualified local hospitals or County-affiliated organizations to provide evidence-based health promotion programming to assist individuals, 60 years of age or older, residing in Montgomery County who have chronic medical conditions, to live longer and healthier lives.
- B. The Older Americans Act (OAA) provides funding for disease prevention and health promotion. The program was established in 1987 to provide services to persons 60 years of age or older to support a healthy lifestyle and promote healthy behaviors. The National Council on Aging's (NCOA) evidence-based programs offer proven ways to promote health and prevent disease among older adults.
- C. The goal of the evidence-based health promotion programming is to assist older adults with chronic medical conditions to live longer and healthier lives.
- D. The Contractor was selected under Open Solicitation #1160876 Evidence-Based Health Promotion Programming, to provide services in accordance with the Open Solicitation and this Contract.

II. SCOPE OF SERVICES

- A. The Contractor must provide evidence-based health promotion programs and meet the requirements as outlined below:
 - 1. The Contractor must follow established curricula for an evidence-based health promotion program from the National Council on Aging <https://www.ncoa.org/resources/ebpchart/>.
 - 2. The Contractor must perform evidence-based health promotion programs at locations mutually agreed upon by the Contractor and DHHS. The evidence-based health promotion programs must be provided in a class setting or workshop setting environment. All locations chosen for programming must meet the Americans with Disabilities Act requirements for access to people with disabilities, and that accommodations for their participation are made when necessary.
 - 3. The number of participants per class, and the number, date, and time of classes must be determined mutually by the Contractor and DHHS.
 - 4. The Contractor must assign a Project Coordinator. The Project Coordinator must have the following minimum requirements:
 - a) certification in Health Education or related field;
 - b) experience implementing and leading evidence-based health promotion programs, and;
 - c) experience managing evidence-based health promotion programs.

5. The Contractor must identify, screen, train, and monitor leaders who will facilitate classes and workshops.
6. The Contractor must promote the programming to potential leaders who teach these classes and workshops, and to clients that are 60 years of age and older, by the following:
 - a) recruiting clients that are 60 years of age or older;
 - b) program target-marketing via mailings, newsletters, websites, and similar communications
 - c) marketing must be pre-approved by DHHS and include the Montgomery County, Maryland logo and must include the following language, "Services are funded in part by Montgomery County, and in part by Maryland's Department of Health and Human Services." and;
 - d) the Contractor must neither solicit clients for services outside of this Contract, nor promote any privately owned business.
- B. The Contractor must be willing to make agreed-upon adjustments to the program schedule and location, as requested by the County.
- C. The Contractor must be responsive to the County's needs and collaborate with program staff to ensure that services are provided appropriately.
- D. The County has the right to unannounced, on-site monitoring visits to evaluate the provision of services in accordance with the terms of the Contract and reserves the right to access all program files and materials of the Contractor.
- E. The County may receive additional funding during the Contract term and those funds could be used to expand and/or enhance programming, but is not guaranteed.

III. RECORDS AND REPORTS

- A. The Contractor must provide an annual report each year the Contract is in effect. The report must include a description of the total clients served and type of service, in a format approved by the County. This annual report must accompany the year-end invoice.
- B. The Contractor must submit a monthly report, in a format approved by the County, no later than 15 days following the end of each month. The report must include, but is not limited to:
 1. date and location program(s) was held;
 2. number of client registrations, attendance, and participated completers;
 3. Contract number and purchase order number.

IV. COMPENSATION

The County will set forth the compensation rate on a Fixed Rate Schedule for Contracts awarded as a result of Open Solicitation #1160876, Attachment C, which will be posted on the DHHS website at <https://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. The County will compensate the Contractor only up to the amount stated in the purchase order(s) issued to the Contractor. The maximum amount payable under this Contract must not exceed the total amount shown on the purchase order(s) issued to the Contractor for that fiscal year that is based on the rates set forth on the DHHS website.

Price increase request beyond the County's set forth Fixed Rate Schedule, posted on the DHHS website at <https://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>, will not be approved. In the event these rates change, within 30 days of the effective date, the Department of Health and Human Services' Director or her/his designee will promptly notify the Director, Office of Procurement and the Contractor and forward the updated Rate Schedule, indicating the effective date of the new rates.

No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount.

V. INVOICES

The Contractor must submit invoices electronically via email to healthpromotion@montgomerycountymd.gov with all required supporting documentation in a format approved by the County no later than 15 days following the end of each month. Upon receipt, acceptance, and approval of the Contractor's invoice, the County will make payment, net 30 days, at the established current Contract term rate, Attachment C, which can also be found at the DHHS website, <https://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html> for services provided by the Contractor.

VI. TERM

This Contract is effective on the date indicated on the signature page and is effective until the second September 30th following the effective date of the Contract. Before the Contract term ends, the Director may (but is not required to) renew this Contract, if the Director determines that renewal is in the best interest of the County. The Contractor's satisfactory performance does not guarantee renewal of this Contract. The Director may exercise this option to renew the Contract for two (2) additional two-year terms. Any additional renewal of this Contract is contingent upon fiscal appropriations, County needs, and the approval of the Contractor.

VII. GENERAL CONDITIONS AND INSURANCE

MANDATORY MINIMUM INSURANCE REQUIREMENTS – The County is seeking local hospitals or County-affiliated organizations to provide evidence-based health promotion programming to assist individuals, 60 years of age or older, residing in Montgomery County, who have chronic medical conditions, to live longer and healthier lives.

Prior to the execution of the contract by the County, the proposed awardee/contractor must obtain, at their own cost and expense, the following minimum (not maximum) insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary with the County's being non-contributory.

Commercial General Liability

A minimum limit of liability of one million dollars (\$1,000,000), per occurrence, and two million (\$2,000,000) aggregate, for bodily injury, personal injury and property damage coverage per occurrence including the following coverages:

Contractual Liability

Premises and Operations

Independent Contractors & Subcontractors

Products and Completed Operations

Sexual Molestation and Abuse – \$1,000,000 limit required

Worker's Compensation/Employer's Liability – can be waived if contractor is a sole proprietor

Meeting all statutory requirements of the State of Maryland Law and with the following minimum

Employers' Liability limits:

Bodily Injury by Accident - \$100,000 each accident

Bodily Injury by Disease - \$500,000 policy limits

Bodily Injury by Disease - \$100,000 each employee

Subcontractor Requirements

Unless otherwise stated below the proposed awardee/contractor shall require all subcontractors to obtain, and maintain, insurance with limits equal to, or greater, than those limits required within the contract.

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on an endorsement to Contractor's commercial

general and contractor's excess/umbrella insurance policies, if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability of the contractor. Coverage pursuant to this Section shall not include any provision that would bar, restrict, or preclude coverage for claims by Montgomery County against Contractor, including but not limited to "cross-liability" or "insured vs insured" exclusion provisions.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, Maryland
Dept Health & Human Services
401 Hungerford Dr., 6th Floor
Rockville, MD 20850

VIII. CONTRACT ADMINISTRATOR

The Contract Administrator for this Contract is: Ijeoma Oji, Team Lead, Contract Management Team, 401 Hungerford Drive – 6th Floor, Rockville, MD 20850; Telephone #: 240-777-3807

IX. Priority of Documents

The following documents are incorporated by reference and made a part of this Contract and are listed in the following order of precedence to be applied in the event of a conflict in their term:

1. This Contract Document;
2. The General Conditions of Contract Between County and Contractor (Attachment A);
3. Business Associate Agreement (Attachment B);
4. Fixed Rate Schedule (Attachment C)

SIGNATURE PAGE FOLLOWS

Open Solicitation #1160876
FORM CONTRACT # _____

Signature Page

This Contract, which incorporates the approved Form Contract, General Conditions of Contract Between County and Contractor and all required forms under Priority of Documents, copies of which have been provided to the Contractor, is effective this __ day of _____, 20__, by and between _____, hereinafter referred to as the "Contractor" and Montgomery County, Maryland, hereinafter referred to as the "County". This Contract will become effective upon signature by the Director, Office of Procurement. This Contract and any renewals or extensions of this Contract are subject to the appropriation of funds.

Part A: Contractor's Offer to Provide Services:

(Prospective Contractor Must Complete)

Contracting Corporation, Partnership Limited Liability Company OR Proprietorship

Agency Name

Signature

Typed

Title

Date

Part B: County Acceptance:

MONTGOMERY COUNTY, MARYLAND

Avinash G. Shetty, Director
Office of Procurement

Date

RECOMMENDATION

James C. Bridgers, Jr., Ph.D., MBA, Director
Department of Health and Human Services

Date

This form has been approved as to form
by the Office of the County Attorney.

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq., and 47 U.S.C., ch. 5.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. Through signature of this contract, the contractor certifies that the contractor has filed an initial statement with the Maryland State Board of Elections in compliance with MD Code Ann., Election Law, §14-104(b)(1), or is not required to file an initial statement as per MD Code Ann., Election Law, §14-104(c)(2).

For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The County's prevailing wage law, as found at §11B-33C of the County Code, applies to certain construction and mechanical systems service contracts. To the extent applicable, the County's prevailing wage requirements are enumerated within this solicitation/contract in the "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor." If applicable to this contract, the Addendum will be attached to the contract, and will be incorporated herein by reference, and made a part thereof.

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Md. State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section.

The contractor agrees to comply with the requirements of the Displaced Service Workers Protection Act, which appears in County Code, Chapter 27, Human Rights and Civil Liberties, Article X, Displaced Service Workers Protection Act, §§ 27-64 through 27-66.

Montgomery County's Earned Sick and Safe Leave Law, found at Sections 27-76 through 27-82 of the County Code, became effective October 1, 2016. An employer doing business in the County, as defined under the statute, must comply with this law. This includes an employer vendor awarded a County contract. A vendor may obtain information regarding this law at <http://www.montgomerycountymd.gov/humanrights/>

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor must not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by the Director, Office of Procurement, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests. The contractor must not employ any subcontractor that is a debarred or suspended person under County Code §11B-37. The contractor is fully responsible to the County for the acts and omissions of itself, its subcontractors and any persons either directly or indirectly employed by them. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the County, and nothing in the contract documents is intended to make any subcontractor a beneficiary of the contract between the County and the contractor.

5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;

- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Office of Procurement;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS, AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b).
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code. In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.

E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the minimum insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. The minimum limits of coverage listed shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County, nor shall failure by the County to request evidence of this insurance in any way be construed as a waiver of proposed awardee/contractor's obligation to provide the insurance coverage specified. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Contractor must provide to the County at least 30 days written notice of a cancellation of, or a material change to, an insurance policy. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. After consultation with the Department of Finance, Division of Risk Management, the Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

Please disregard TABLE A. and TABLE B., if they are replaced by the insurance requirements as stated in an attachment to these General Conditions of Contract between County and Contractor.

TABLE A. INSURANCE REQUIREMENTS
(See Paragraph #21 under the General Conditions of Contract
between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees) Bodily Injury by				

Accident (each)	100	100	100	See
Disease (policy limits)	500	500	500	Attachment
Disease (each employee)	100	100	100	
Commercial General Liability for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300 Attachment	500	1,000	See
Minimum Automobile Liability (including owned, hired and non owned automobiles)				
Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	Attachment
Property Damage				
each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment
Certificate Holder Montgomery County Maryland (Contract #) Office of Procurement 27 Courthouse Square, Ste 330 Rockville, Maryland 20850				

*Professional services contracts only

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TABLE B. INSURANCE REQUIREMENTS
 (See Paragraph #21 under the General Conditions of Contract
 between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder
 Montgomery County Maryland (Contract #)
 Office of Procurement
 27 Courthouse Square, Ste 330
 Rockville, Maryland 20850

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22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. INFORMATION SECURITY

A. Protection of Personal Information by Government Agencies:

In any contract under which Contractor is to perform services and the County may disclose to Contractor personal information about an individual, as defined by State law, Contractor must implement and maintain reasonable security procedures and practices that: (a) are appropriate to the nature of the personal information disclosed to the Contractor; and (b) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Contractor's requirement to implement and maintain reasonable security practices and procedures must include requiring any third-party to whom it discloses personal information that was originally disclosed to Contractor by the County to also implement and maintain reasonable security practices and procedures related to protecting the personal information. Contractor must notify the County of a breach of the security of a system if the unauthorized acquisition of an individual's personal information has occurred or is reasonably likely to occur, and also must share with the County all information related to the breach. Contractor must provide the above notification to the County as soon as reasonably practicable after Contractor discovers or is notified of the breach of the security of a system. Md. Code Ann., State Gov't. § 10-1301 through 10-1308 (2013).

B. Payment Card Industry Compliance:

In any contract where the Contractor provides a system or service that involves processing credit card payments (a "Payment Solution"), the Payment Solution must be Payment Card Industry Data Security Standard Compliant ("PCI-DSS Compliant"), as determined and verified by the Department of Finance, and must (1) process credit card payments through the use of a Merchant ID ("MID") obtained by the County's Department of Finance by and in the name of the County as merchant of record, or (2) use a MID obtained by and in the name of the Contractor as merchant of record.

24. NON-CONVICTION OF BRIBERY

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

25. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B 33 and Section 27 19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

26. PAYMENT AUTHORITY

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees, late fees, or shipping fees that are not provided for in the contract. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

27. P-CARD OR SUA PAYMENT METHODS

The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account ("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

28. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

29. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

30. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

31. TIME

Time is of the essence.

32. WORK UNDER THE CONTRACT

Contractor must not commence work under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

33. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between Montgomery County, Maryland (hereinafter referred to as “Covered Entity”), and _____ (hereinafter referred to as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

I. GENERAL

A. Covered Entity has a business relationship with Business Associate that is memorialized in Montgomery County Contract # _____ (the “Underlying Agreement”), pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996, including all pertinent regulations (45 CFR Parts 160 and 164), issued by the U.S. Department of Health and Human Services, including Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as codified in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and including any and all applicable Privacy, Security, Enforcement, or Notice (Breach Notification) Rules or requirements (collectively, “HIPAA”), as all are amended from time to time; and

B. The performance of the Underlying Agreement may involve the creation, exchange, or maintenance of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

C. For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA; and

D. This Agreement articulates the obligations of the Parties as to use and disclosure of PHI. It does not affect Business Associate’s obligations to comply with the the Maryland Confidentiality of Medical Records Act (Md. Code Ann., Health-General I §§4-301 *et seq.*) (“MCMRA”) or other applicable law with respect to any information the County may disclose to Business Associate as part of Business Associate’s performance of the Underlying Agreement; and

E. This Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof; and

F. The above premises having been considered and incorporated by reference into the sections below, the Parties, intending to be legally bound, agree as follows:

II. DEFINITIONS.

A. The terms used in this Agreement have the same meaning as the definitions of those terms in HIPAA. In the absence of a definition in HIPAA, the terms have their commonly understood meaning.

B. Consistent with HIPAA, and for ease of reference, the Parties expressly note the definitions of the following terms:

1. "Breach" is defined at 45 CFR § 164.402.
2. "Business Associate" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean _____
3. "Covered Entity" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean the County.
4. "Designated Record Set" is defined at 45 CFR § 164.501.
5. "Individual" is defined at 45 CFR §§ 160.103, 164.501 and 164.502(g), and includes a person who qualifies as a personal representative.
6. "Protected Health Information" or "PHI" is defined at 45 CFR § 160.103.
7. "Required By Law" is defined at 45 CFR § 164.103.
8. "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.
9. "Security Incident" is defined at 45 CFR § 164.304.
10. "Unsecured Protected Health Information" or "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology, as specified by the Secretary in the guidance as noted under the HITECH Act, section 13402(h)(1) and (2) of Public Law 111-5, codified at 42 U.S.C. § 17932(h)(1) and (2), and as specified by the Secretary in 45 CFR 164.402.

III. PERMISSIBLE USE AND DISCLOSURE OF PHI

A. Except as otherwise limited in this Agreement, or by privilege, protection, or confidentiality under HIPAA, MCMRA, or other applicable law, Business Associate may use or disclose (including permitting acquisition or access to) PHI to perform applicable functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement. Moreover, the provisions of HIPAA are expressly incorporated by reference into, and made a part of, this Agreement.

B. Business Associate may use or disclose (including permitting acquisition or access to) PHI only as permitted or required by this Agreement or as Required By Law.

C. Business Associate is directly responsible for full compliance with the relevant requirements of HIPAA.

D. Business Associate must not use or disclose (including permitting acquisition or access to) PHI other than as permitted or required by this Agreement or HIPAA, and must use or disclose PHI only in a manner consistent with HIPAA. As part of this, Business Associate must use appropriate safeguards to prevent use or disclosure of PHI that is not permitted by this Agreement or HIPAA. Furthermore, Business Associate must take reasonable precautions to protect PHI from loss, misuse, and unauthorized access, disclosure, alteration, and destruction.

E. Business Associate must implement and comply with administrative, physical, and technical safeguards governing the PHI, in a manner consistent with HIPAA, that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

F. Business Associate must immediately notify Covered Entity, in a manner consistent with HIPAA, of: (i) any use or disclosure of PHI not provided for by this Agreement, including a Breach of PHI of which it knows or by exercise of reasonable diligence would have known, as required at 45 CFR §164.410; and, (ii) any Security Incident of which it becomes aware as required at 45 CFR §164.314(a)(2)(i)(C). Business Associate's notification to Covered Entity required by HIPAA and this Section III.F must:

1. Be made to Covered Entity without unreasonable delay and in no case later than 14 calendar days after Business Associate: a) knows, or by exercising reasonable diligence would have known, of a Breach, b) becomes aware of a Security Incident, or c) becomes aware of any use or disclosure of PHI not provided for by this Agreement;

2. Include the names and addresses of the Individual(s) whose PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement. In addition, Business Associate must provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

3. Be in substantially the same form as Exhibit A hereto;

4. Include a brief description of what happened, including the date of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, if known, and the date of the discovery of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

5. Include a description of the type(s) of Unsecured PHI that was involved in the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);

6. Identify the nature and extent of the PHI involved, including the type(s) of identifiers and the likelihood of re identification;

7. If known, identify the unauthorized person who used or accessed the PHI or to whom the disclosure was made;

8. Articulate any steps the affected Individual(s) should take to protect him or herself from potential harm resulting from the Breach, Security Incident, or use or disclosure of PHI not permitted by this Agreement;

9. State whether the PHI was actually acquired or viewed;

10. Provide a brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, to mitigate losses, and to protect against any further Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

11. Note contact information and procedures for an Individual(s) to ask questions or learn additional information, which must include a toll-free telephone number of Business Associate, along with an e-mail address, Web site, or postal address;

and

12. Include a draft letter for the Covered Entity to utilize, in the event Covered Entity elects, in its sole discretion, to notify the Individual(s) that his or her PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement that includes the information noted in Section III.F.4 – III.F.11 above.

G. Business Associate must, and is expected to, directly and independently fulfill all notification requirements under HIPAA.

H. In the event of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, Business Associate must mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

I. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any agent, subcontractor, or employee to whom it provides PHI (received from, or created or received by, Business Associate on behalf of Covered Entity) agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

J. Business Associate must ensure that any contract or other arrangement with a subcontractor meets the requirements of paragraphs 45 CFR §164.314(a)(2)(i) and (a)(2)(ii) required by 45 CFR § 164.308(b)(3) between a Business Associate and a subcontractor, in the same manner as such requirements apply to contracts or other arrangements between a Covered Entity and Business Associate.

K. Pursuant to 45 CFR § 164.502(a)(4)(ii), Business Associate must disclose PHI to the Covered Entity, Individual, or Individual's designee, as necessary to satisfy a Covered

Entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of PHI.

L. To the extent applicable, Business Associate must provide access to PHI in a Designated Record Set at reasonable times, at the request of Covered Entity or as directed by Covered Entity, to an Individual specified by Covered Entity in order to meet the requirements under 45 CFR § 164.524.

M. A Business Associate that is a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, must not use or disclose PHI that is genetic information for underwriting purposes, in accordance with the provisions of 45 CFR 164.502.

N. To the extent applicable, Business Associate must make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR § 164.526, at the request of Covered Entity or an Individual.

O. Business Associate must, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

P. Business Associate must, upon request and with reasonable notice, furnish to Covered Entity security and privacy audit results, risk analyses, security and privacy policies and procedures, details of previous Breaches and Security Incidents, and documentation of controls.

Q. Business Associate must also maintain records indicating who has accessed PHI about an Individual in an electronic designated record set and information related to such access, in accordance with 45 C.F.R. § 164.528. Business Associate must document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Should an Individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. § 164.528, Business Associate must promptly provide Covered Entity with information in a format and manner sufficient to respond to the Individual's request.

R. Business Associate must, upon request and with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI that was provided to it by Covered Entity.

S. Business Associate must make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with HIPAA. Business Associate must make the aforementioned information available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate must comply and cooperate with any request for documents or other information from the Secretary directed to

Covered Entity that seeks documents or other information held or controlled by Business Associate.

T. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502(j)(1).

U. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or the Underlying Agreement, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the limited purpose for which it was disclosed to the person, and the person must agree to notify Business Associate of any instance of any Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement of which it is aware in which the confidentiality of the information has been breached.

V. Business Associate understands that, pursuant to 45 CFR § 160.402, the Business Associate is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation of the HIPAA rules based on the act or omission of any agent of the Business Associate, including a workforce member or subcontractor, acting within the scope of the agency.

IV. TERM AND TERMINATION.

A. Term. The Term of this Agreement shall be effective as of the effective date of the Underlying Agreement, and shall terminate: (1) when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity; or, (2) if it is infeasible to return or destroy PHI, in accordance with the termination provisions in this Article IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, have the right to terminate this Agreement and to terminate the Underlying Agreement, and shall report the violation to the Secretary;

2. Have the right to immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, and shall report the violation to the Secretary; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.

4. This Article IV, Term and Termination, Paragraph B, is in addition to the provisions set forth in Paragraph 27, Termination for Default of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement, in which “Business Associate” is “Contractor” and “Covered Entity” is “County” for purposes of this Agreement.

C. Effect of Termination.

1. Except as provided in Section IV.C.2, upon termination or cancellation of this Agreement, for any reason, Business Associate must return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of a subcontractor(s), employee(s), or agent(s) of Business Associate. Business Associate must not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate must provide to Covered Entity written notification of the nature of the PHI and the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate must extend the protections of this Agreement to such PHI and limit further use(s) and disclosure(s) of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement survive termination of this Agreement with regard to such PHI.

3. Should Business Associate violate this Agreement, HIPAA, the Underlying Agreement, the MCMRA, or other applicable law, Covered Entity has the right to immediately terminate any contract then in force between the Parties, including the Underlying Agreement.

V. CONSIDERATION. Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be reasonably, justifiably, and detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. CAUSES OF ACTION IN THE EVENT OF BREACH. As used in this paragraph, the term “breach” has the meaning normally ascribed to that term under the Maryland law related to contracts, as opposed to the specific definition under HIPAA related to PHI. Business Associate hereby recognizes that irreparable harm will result to Covered Entity in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of this Agreement. Furthermore, in the event of breach of this Agreement by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The causes of action

contained in this Article VI are in addition to (and do not supersede) any action for damages and/or any other cause of action Covered Entity may have for breach of any part of this Agreement. Furthermore, these provisions are in addition to the provisions set forth in Paragraph 18, "Indemnification", of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which "Business Associate" is "Contractor" and "Covered Entity" is "County", for purposes of this Agreement.

VII. MODIFICATION; AMENDMENT. This Agreement may be modified or amended only through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of HIPAA, including its Privacy, Security, and Notice Rules.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES. Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement, along with the Underlying Agreement, shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement, by its title, date, and substance and specifically state that the provisions of the later written agreement shall control over this Agreement and Underlying Agreement. In any event, any agreement between the Parties, including this Agreement and Underlying Agreement, must be in full compliance with HIPAA, and any provision in an agreement that fails to comply with HIPAA will be deemed separable from the document, unenforceable, and of no effect.

IX. COMPLIANCE WITH STATE LAW. The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If HIPAA conflicts with another applicable law regarding the degree of protection provided for Protected Health Information, Business Associate must comply with the more restrictive protection requirement.

X. MISCELLANEOUS.

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.

B. Regulatory References. A reference in this Agreement to a section in HIPAA means the section in effect, or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Joy Page, Esq.
Chief of Governance, Risk and Compliance Division
Montgomery County, Maryland
401 Hungerford Drive, 7th Floor
Rockville, Maryland 20850

(240) 777-3247 (Voice)
(240) 777- 3099 (Fax)

Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

D. Maryland Law. This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Maryland, without regard to choice of law principles.

E. Incorporation of Future Amendments. Other requirements applicable to Business Associates under HIPAA are incorporated by reference into this Agreement.

F. Penalties for HIPAA Violation. In addition to that stated in this Agreement, Business Associate may be subject to civil and criminal penalties noted under HIPAA, including the same HIPAA civil and criminal penalties applicable to a Covered Entity.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

THE ARC MONTGOMERY COUNTY, INC. MONTGOMERY COUNTY, MARYLAND

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: James C. Bridgers, Jr., Ph.D., MBA

Title: Director, Department of Health
and Human Services

Date: _____

EXHIBIT A

FORM OF NOTIFICATION

This notification is made pursuant to Section III.F of the Business Associate Agreement between:

- Montgomery County, Maryland, (the “County”) and
- _____ (Business Associate).

Business Associate hereby notifies the County that there has been a Breach, Security Incident, or use or disclosure of PHI not provided for by the Business Associate Agreement (an “Incident”) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the Incident:

Date of the Incident: _____

Date of discovery of the Incident: _____

Does the Incident involve 500 or more individuals? Yes/No

If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the Incident:

Names and addresses of individuals affected by the Incident:

(Attach additional pages as necessary) _____

The types of unsecured PHI that were involved in the Incident (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against any further Incidents:

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Attachment C

Fixed Rate Schedule

Open Solicitation #1160876

Evidence-Based Health Promotion Programming

Scope of Service	Reimbursement Rate	
Fitness Instructor	\$55/per hour	The County will compensate the Contractor only up to the amount stated in the purchase order(s) issued to the Contractor. The maximum amount payable under this Contract must not exceed the total amount shown on the purchase order(s) issued to the Contractor for that fiscal year that is based on the rates set forth on the DHHS website.
Bilingual Instructor	\$50/per hour	
Lay Leader or Trainer	\$40/per hour	

ATTACHMENT D
REFERENCE FORM

(Each applicant must submit contact information for three references.)

Applicants must provide three (3) references whom the County may contact. Names for references should be of individuals who directly supervised or had direct knowledge of services provided by the applicant.

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____

CONTACT PERSON: _____

PHONE: _____

CONTACT PERSON'S EMAIL ADDRESS: _____

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____

CONTACT PERSON: _____

PHONE: _____

CONTACT PERSON'S EMAIL ADDRESS: _____

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____

CONTACT PERSON: _____

PHONE: _____

CONTACT PERSON'S EMAIL ADDRESS: _____

ATTACHMENT E

APPLICATION/VENDOR INFORMATION FORM

Name of Applicant/Vendor: _____
(Organization Name)

Federal Taxpayer Identification # (TIN): _____

Address: _____

City and State: _____ Zip Code: _____

Primary Contact Name: _____

E-mail Address: _____

Phone #: _____ Fax #: _____ Other #: _____

Type of Corporation (check one): For Profit Not-For-Profit Sole Proprietorship

Certifications: (Please list if applicable) _____

List the type(s) of Evidence-Based Health Promotion programming willing/interested in providing:

Acknowledgement:

I have received a copy of the packet for Open Solicitation #_____, reviewed the documents, and agree to the solicitation's requirements, including the insurance requirements. I have received a copy of the County's General Conditions (Attachment A) to the Pre-Approved Form Contract and accept those terms and conditions.

Signature of Person Completing this Form

Title

Date