NOTICE TO VENDORS
#1014084
Pre-Admission Screening and Resident Review (PASRR)

Montgomery County, Maryland, through its Department of Health and Human Services (DHHS), Aging and Disability Services service area (A&D), is seeking applications from qualified Health professionals to conduct Pre-Admission Screening and Resident Review (PASRR) evaluations for individuals residing in Montgomery County with mental illness, mental retardation or other related mental health conditions. A complete description of the Scope of Services required for this solicitation is listed in this Open Solicitation packet. You may obtain a packet by contacting the Contract Management Team at 240-777-1562 and providing Open Solicitation #1014084, your name or a contact name, your complete address, your telephone number and/or an email address to which Open Solicitation #1014084 packet may be sent.

PASRR is a federally mandated program that requires all states to develop a comprehensive evaluation process by which to pre-screen individuals known or suspected of having mental illness, mental retardation or other related mental health conditions and who are seeking admission to a nursing facility (NF) certified under the Medicaid program.

The evaluation process is a component of PASRR, which was enacted in the Federal Omnibus Budget Reconciliation Act (OBRA) of 1987, subsequently amended by OBRA in 1990, and established under the requirements of section 1919 (e) of the Federal Social Security Act (SSA).

There are a total of four (4) services in the Scope of Services for this Open Solicitation as follows:

1. Maryland licensed Nurse
2. Maryland licensed Social Worker
3. Maryland licensed Psychologist
4. Maryland licensed Psychiatrist

All applicants must have a minimum of one (1) year experience performing comprehensive evaluations. A current copy of your license must be submitted with your proposal.

Only evaluations requested by the County's Contract Monitor will be compensated. The County will set forth the compensation rates based on a Rate Schedule for this Open Solicitation which will be posted on the DHHS website at http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp. 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.

Questions related to the technical information required in this Open Solicitation should be directed to Donna T. Klein, Nurse Manager, at 240-777-3915.

Questions related to the application/contract process, insurance requirements and contract execution should be directed to Lisa M. Colburn, Senior Contract Manager, at 240-777-1163.

INSTRUCTIONS TO APPLICANTS
Open Solicitation #1014084
Pre Admission Screening and Resident Review (PASRR)

The County will enter into contract with all applicants who meet the minimum qualifications described in this Open Solicitation. The County will sign the Contract and return a copy to the applicant. The Pre-Approved Form Contract with all Attachments will constitute the entire Contract. The applicant must sign the County's Form Contract which includes the General Conditions of Contract Between County and Contractor, and other Attachments, as written, ***with no modifications***.

Questions related to the technical information required in this Open Solicitation should be directed to Donna T. Klein, Nurse Manager, at 240-777-3915.

Questions related to the application/contract process, insurance requirements and contract execution should be directed to Lisa M. Colburn, Senior Contract Manager, at 240-777-1163.

I. Submission Documents - The following items ***must*** be submitted with your application:

A. A narrative description of the applicant's qualifications and experience conducting PASRR evaluations. In addition, each applicant must submit a Curriculum Vitae or a Résumé highlighting applicable education and experience.

B. Pre-Approved Form Contract - must be filled out and submitted following 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 signature page. Enter a date only in the signature block.***

3. Submit all the pages of the Form Contract (not just the signature page).

C. The following attachments must be completed and submitted:

1. Attachment C, "Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor" is informational only.

2. Attachment D*, "Minority, Female Disabled (MFD) Person Subcontractor Performance Plan. Please submit your MFD plan or request a waiver. If this is incomplete, the application will be rejected.

3. Attachment E, "Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor. If this is incomplete, the application will be rejected.

4. Attachment F, "Application Form". Please complete the Application Form in its entirety. Applicants must check off profit, non-profit or sole proprietorship designation or the application will be rejected.

5. Attachment G, "Reference Form". Each applicant must submit contact information for three (3) references who can attest to the applicant's experience in conducting PASRR evaluations.

6. Service Checklist - Applicants must indicate on, Attachment H, which service(s) they propose to provide under this Open Solicitation.

7. Completion of Attachment I, "Minority Business Program & Offeror's Representation", is Optional.

8. Completion of Attachment J, "Business Associate Agreement". Each applicant must sign this form as written, with no modifications.

D. Certificate(s) of Insurance – that provides evidence of meeting the insurance requirements set forth in Article VII. General Conditions and Insurance of the Pre-Approved Form Contract. Contact your insurance broker to obtain the Certificate.

E. Licenses – A copy of your current license to practice in the State of Maryland.

F. Each applicant, other than an individual or individual proprietorship, must submit: (1) a copy of Articles of Incorporation (including any amendments) or other documents filed with the Maryland State Department of Assessments and Taxation (SDAT) (or other State, as applicable) showing the applicant's full legal name including any trade names or names under which the applicant does business, (2) a completed and signed copy of Internal Revenue Service (IRS) form W9 (Request for Taxpayer Identification Number and Certification); and (3) a document from SDAT showing that the applicant is in good standing. If applicant is a sole proprietorship, a copy of applicant's Social Security card may be substituted for the Articles of Incorporation.

G. If applicant is a Not-for-Profit entity, a Letter of Determination from the IRS must be submitted.

If you have questions or need assistance in completing Attachment C, please contact Al Boss, Office of Business Relations and Compliance, at 240-777-9912.

II. Instructions

Please complete the enclosed Application/Vendor Information Form, attach all of the above listed mandatory submissions, sign the Pre-Approved Form Contract signature page and return with all Attachments:

Department of Health & Human Services
Contract Management Team
401 Hungerford Drive, 6th floor
Rockville, Maryland 20850
Attention: Lisa M. Colburn

If your application meets the minimum qualifications listed in the Form Contract, the County will execute the Contract and return a copy to you. A copy of the County's General Conditions Between County and Contractor ("General Conditions") is included with the solicitation packet. The County's General Conditions will be included as Attachment A to any contract that results

from this Open Solicitation and includes terms and conditions that the County requires of Contractors. The Contract Management Team will forward a copy of the executed Contract

along with related materials to you. Once you receive notice from the County that the Contract has been executed and receive an executed Purchase Order from the County, you may provide services to clients.

The County makes no guarantee that any single contractor will receive referrals under a Contract resulting from Open Solicitation #1014084. Montgomery County Adult Evaluation and Review Services (AERS) will receive referrals for evaluations from the community, hospital and nursing facility social workers. AERS, in coordination with the DHHS Contract Monitor, will assign each evaluation referral to the appropriate Contractor, on a rotating basis by service required and according to diagnosis of Mental Illness or Intellectual Disability, to perform on-site evaluation or client review for PASRR.

Award of a Contract under this Open Solicitation is subject to fiscal appropriations.

The County reserves the right to cancel this Open Solicitation at any time.

PRE-APPROVED FORM CONTRACT
Open Solicitation #1014084
Pre-Admission Screening and Resident Review (PASRR)

I. BACKGROUND/INTENT

A. The Montgomery County, Maryland Department of Health and Human Services (DHHS), through its Aging and Disabilities Services Service Area, serves individuals with mental illness, mental retardation or other related mental health conditions residing in Montgomery County. The DHHS recognizes a need for Pre-Admission Screening and Resident Review (PASRR) evaluations for these at-risk individuals. Through Open Solicitation #1014084, the County is seeking qualified health professionals to conduct comprehensive evaluations for all individuals who are required to be evaluated under PASRR.

B. PASRR is a federally mandated program that requires all states to develop a comprehensive evaluation process by which to pre-screen individuals known or suspected of having mental illness, mental retardation or other related mental health conditions and who are seeking admission to a nursing facility (NF) certified under the Medicaid program.

C. The evaluation process is a component of PASRR, which was enacted in the Federal Omnibus Budget Reconciliation Act (OBRA) of 1987, subsequently amended by OBRA in 1990, and established under the requirements of section 1919 (e) of the Federal Social Security Act (SSA).

D. A PASRR evaluation requires the combined services of qualified health professionals; specifically, a nurse, a social worker, a psychologist and a psychiatrist. Contracts resulting from this Open Solicitation will engage qualified health professionals to support the provision of PASRR services.

E. There are a total of four (4) services in the Scope of Services for this Open Solicitation. They are:

1. Licensed Nurse
2. Licensed Social Worker
3. Licensed Psychologist
4. Licensed Psychiatrist

All applicants must have experience in performing comprehensive evaluations and must be licensed to practice in the State of Maryland.

F. Contractors awarded a Contract as a result of Open Solicitation #1014084 are considered to be independent Contractors and not employees of Montgomery County Government.

II. SCOPE OF SERVICES

Depending on the service the Contractor applied to perform and the Contract awarded to the Contractor in accordance with Open Solicitation #1014084, the Contractor must provide the following services:

A. Licensed Nurse - The Nurse must:

1. Conduct comprehensive on-site PASRR evaluations in accordance with the PASRR evaluation criteria outlined in 42 Code of Federal Regulations (CFR) 483.128 (Attachment B). Each evaluation must include a recommended treatment plan for the client Evaluations must be performed for clients that are referred by the DHHS Contract Monitor for clients who are eligible per Federal Law;

2. exercise independent professional judgment and assume professional responsibility for all services provided;

3. comply with all federal, state and local laws, ordinances, rules and regulations as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted. This obligation shall include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1966 (HIPAA) and other state, federal and local laws governing the privacy of medical information;

4. ensure confidentiality of all records; and

5. be authorized by law and licensed in the State of Maryland to perform the services described in Open Solicitation #1014084 and this Contract.

B. Licensed Social Worker - The Social Worker must:

1. Conduct comprehensive on-site PASRR evaluations in accordance with the PASRR evaluation criteria outlined in 42 Code of Federal Regulations (CFR) 483.128 (Attachment B). Each evaluation must include a recommended treatment plan for the client. Evaluations must be performed for clients that are referred by the DHHS Contract Monitor for clients who are eligible per Federal Law;

2. exercise independent professional judgment and assume professional responsibility for all services provided;

3. comply with all federal, state and local laws, ordinances, rules and regulations as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted. This obligation shall include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1966 (HIPAA) and other state, federal and local laws governing the privacy of medical information;

4. ensure confidentiality of all records; and

5. be authorized by law and licensed in the State of Maryland to perform the services described in Open Solicitation #1014084 and this Contract.

C. Licensed Psychologist - The Psychologist must:

1. Conduct comprehensive on-site PASRR evaluations in accordance with the PASRR evaluation criteria outlined in 42 Code of Federal Regulations (CFR) 483.128 (Attachment B). Each evaluation must include a recommended treatment plan for the clients. Evaluations must be performed for clients that are referred by the DHHS Contract Monitor, for clients who are eligible per Federal Law;

2. exercise independent professional judgment and assume professional responsibility for all services provided;

3. comply with all federal, state and local laws, ordinances, rules and regulations as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted. This obligation shall include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1966 (HIPAA) and other state, federal and local laws governing the privacy of medical information;

4. ensure confidentiality of all records; and

5. be authorized by law and licensed in the State of Maryland to perform the services described in Open Solicitation #1014084 and this Contract.

D. Licensed Psychiatrist - The Psychiatrist must:

1. Conduct evaluations in accordance with the PASRR evaluation criteria outlined in 42 Code of Federal Regulations (CFR) 483.128 (Attachment B);

2. provide comprehensive reviews of PASRR evaluations conducted on clients diagnosed with Mental Illness. Results of reviews, including all recommendations, must be documented in the case record;

3. complete a PASRR certification on evaluations reviewed in coordination with DHHS Adult Evaluation and Review Services (AERS) multi-disciplinary team;

4. provide consultation, if and as needed, with the AERS and/or the client's private physician and/or nursing home professional staff for clarification of the recommended mental health/treatment plan and/or needs;

5. conduct on-site evaluations of nursing home residents at the request of the AERS. A written comprehensive report must be submitted to the AERS within three (3) business days of the evaluation unless an earlier response is needed and is requested by the AERS;

6. exercise independent professional judgment and assume professional responsibility for all services provided;

7. comply with all federal, state and local laws, ordinances, rules and regulations as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and

hereafter adopted. This obligation shall include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1966 (HIPAA) and other state, federal and local laws governing the privacy of medical information;

8. ensure confidentiality of all records; and

9. be authorized by law and licensed in the State of Maryland to perform the services described in Open Solicitation #1014084.

E. The **minimum qualifications** for Open Solicitation #1014084 and for providing services under this Contract, which all Contractors' who are awarded a Contract must meet, are as follows:

1. The Contractor must have a current license to practice the service for which they are applying under this Open Solicitation (Licensed Nurse, Licensed Social Worker, Licensed Psychologist, Licensed Psychiatrist).

2. The Contractor must meet the County's mandatory insurance requirements as defined in Article VII. General Conditions and Insurance of this Contract and must provide insurance certificates that meet the mandatory insurance requirements and are acceptable to the County's Division of Risk Management.

3. The Contractor must have a minimum of one (1) year experience conducting PASRR evaluations and/or reviews.

III. RECORDS AND REPORTS

1. The Nurse and the Social Worker must submit an evaluation for all individuals who are required to be evaluated under PASRR, including all required DHMH forms and any other required documents, within three (3) business days of referral, to the Contract Monitor and the consulting psychiatrist and/or psychologist for review, comments and certification. In some instances, a shorter response time may be requested by the Contract Monitor and the Contractor must adhere to that schedule.

2. The Psychologist must submit an evaluation for all individuals who are required to be evaluated under PASRR, including all required DHMH forms and any other required documents, within three (3) working days of referral, to the Contract Monitor and must consult with the AERS and/or the client's private physician and/or nursing home professional staff, if needed, for clarification of the mental health treatment plan. In some instances, a shorter response time may be requested by the Contract Monitor and the Contractor must adhere to that schedule.

3. The Psychiatrist must submit an evaluation, including all required DHMH forms and any other required documents, to the Contract Monitor and consult with the AERS as necessary to complete the review process within the nine (9) business day requirement timeframe.

IV. COMPENSATION

The County will set forth the compensation rate on a Rate Schedule for Contracts awarded as a result of Open Solicitation #1014084 which will be posted on the DHHS website at http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp. 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.

V. INVOICES

The Contractor must submit invoices 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, as set forth on the DHHS website, for services provided by the Contractor.

VI. TERM

This Contract is effective on the date of signature by the County's Director, Office of Procurement and will be for an initial two (2) year term. Before the contract term ends, and subject to fiscal appropriations, 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 County shall have the option to extend this Contract for two (2) additional terms of up to two (2) years each. Contractor's satisfactory performance does not guarantee renewal of this Contract.

VII. GENERAL CONDITIONS AND INSURANCE

The General Conditions of Contract Between County and Contractor ("General Conditions") are incorporated by reference and made part of this Contract as Attachment A. The insurance requirements set forth below supersede the insurance requirements set forth in Provision 21 of the General Conditions.

Prior to execution of the Contract by the County, the Contractor must obtain at its own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the County's Division of Risk Management. This insurance must be kept in full force and effect during the term of this Contract, including all amendments and extensions, and if requested by the County, the Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

<u>Commercial General Liability</u>
A minimum limit of liability of ***one million dollars ($1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

Contractual Liability
Premises and Operations
Independent Contractors
Products and Completed Operations

Professional Liability
Professional liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the County with a limit of liability of at least ***one million dollars ($1,000,000)*** per claim and aggregate and a maximum deductible of $25,000. Contractor/proposer agrees to provide a one-year discovery period under this policy.

Workers' Compensation/Employer's Liability
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

Additional Insured
Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

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
Health and Human Services/CMT/Lisa M. Colburn
401 Hungerford Drive, 6th floor
Rockville, Maryland 20850

VII. 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 legal precedence in the event of a conflict in their terms:

1. This Contract Document;
2. The General Conditions of Contract Between County and Contractor (Attachment A);
3. Requirements for States and Long Term Care Facilities, SubPart C – Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals (Attachment B);
4. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor (Attachment C)
5. Minority, Female Disabled (MFD) Person Subcontractor Performance Plan (Attachment D;
6. Wage Requirement for Services Contract Addendum to General Conditions of Contract Between County and Contractor (Attachment E;
7. Application Form (Attachment F);
8. Reference Form (Attachment G;
9. Service Checklist (Attachment H;
10. Minority Business Program & Offeror's Representation (Attachment I); and
11. Business Associate Agreement (Attachment J)

Signature Page
Open Solicitation #1014084
Pre-Admission Screening and Resident Review (PASRR)

This Contract which incorporates by reference: the Instructions and Minimum Qualifications, the completed Application/Vendor Information Form, the References Form, the Notice to Vendors, the Approved Form Contract with attached General Conditions of Contract Between County and Contractor, (Attachment A) and all other attachments, copies of which have been provided to the Contractor, is entered into this _____ day of _____ by and between _____ _____ (the "Contractor") and Montgomery County, Maryland (the "County"). This Contract will become effective on the date of 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

Part B: County Acceptance:

MONTGOMERY COUNTY, MARYLAND

_____
Cherri Branson, Director
Office of Procurement

_____
Date

RECOMMENDATION

_____
Uma S. Ahluwalia, Director
Department of Health and Human Services

_____
Date

This form has been approved as to form and Legality 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. 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 prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

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.

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages.

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.

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.

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 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. 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. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

TABLE A. - INSURANCE REQUIREMENTS
(See Paragraph #21 Under the General Conditions of Contract
Between County and Contractor)

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

	Up to 50	Up to 100	Up to 1,000	Over 1,000
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 minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
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
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

*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)

	Up to 50	Up to 100	Up to 1,000	Over 1,000
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
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

(Remainder of Page Intentionally Left Blank)

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. 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.

24. 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.

25. PAYMENTS

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. 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.

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.

26. 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.

27. 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).

28. 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.

29. 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.

30. TIME

Time is of the essence.

31. 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.

32. 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.

Title 42: Public Health

PART 483--REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES
Subpart C--Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals

§ 483.128 PASARR evaluation criteria.

(a) Level I: Identification of individuals with MI or MR. The State's PASARR program must identify all individuals who are suspected of having MI or MR as defined in §483.102. This identification function is termed Level I. Level II is the function of evaluating and determining whether NF services and specialized services are needed. The State's performance of the Level I identification function must provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative that the individual or resident is suspected of having MI or MR and is being referred to the State mental health or mental retardation authority for Level II screening.

(b) Adaptation to culture, language, ethnic origin. Evaluations performed under PASARR and PASARR notices must be adapted to the cultural background, language, ethnic origin and means of communication used by the individual being evaluated.

(c) Participation by individual and family. PASARR evaluations must involve—

(1) The individual being evaluated;
(2) The individual's legal representative, if one has been designated under State law; and
(3) The individual's family if—
(i) Available; and
(ii) The individual or the legal representative agrees to family participation.

(d) Interdisciplinary coordination. When parts of a PASARR evaluation are performed by more than one evaluator, the State must ensure that there is interdisciplinary coordination among the evaluators.

(e) The State's PASARR program must use at least the evaluative criteria of §483.130 (if one or both determinations can easily be made categorically as described in §483.130) or of §§483.132 and 483.134 or §483.136 (or, in the case of individuals with both MI and MR, §§483.132, 483.134 and 483.136 if a more extensive individualized evaluation is required).

(f) Data. In the case of individualized evaluations, information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in an NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation (§§483.132 and 483.134 and/or §483.136). The two determinations relating to the need for NF level of care and specialized services are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

(g) Preexisting data. Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, to supplement and verify the currency and accuracy of existing data, the State's PASARR program may need to gather additional information necessary to assess proper placement and treatment.

(h) Findings. For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status as documented in medical and social history records.

(i) Evaluation report: Individualized determinations. For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which—

(1) Identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered;

(2) Provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual;

(3) If NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs, including services required in paragraph (i)(5) of this section;

(4) If specialized services are not recommended, identifies any specific mental retardation or mental health services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs;

(5) If specialized services are recommended, identifies the specific mental retardation or mental health services required to meet the evaluated individual's needs; and

(6) Includes the bases for the report's conclusions.

(j) Evaluation report: Categorical determinations. For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which—

(1) Identifies the name and professional title of the person applying the categorical determination and the data on which the application was made;

(2) Explains the categorical determination(s) that has (have) been made and, if only one of the two required determinations can be made categorically, describes the nature of any further screening which is required;

(3) Identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and

(4) Includes the bases for the report's conclusions.

(k) Interpretation of findings to individual. For both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under State law.

(l) Evaluation report. The evaluator must send a copy of the evaluation report to the—

(1) Individual or resident and his or her legal representative;

(2) Appropriate State authority in sufficient time for the State authorities to meet the times identified in §483.112(c) for PASs and §483.114(c) for ARRs;

(3) Admitting or retaining NF;

(4) Individual's attending physician; and

(5) The discharging hospital if the individual is seeking NF admission from a hospital.

(m) The evaluation may be terminated if the evaluator finds at any time during the evaluation that the individual being evaluated—

(1) Does not have MI or MR; or

(2) Has—

(i) A primary diagnosis of dementia (including Alzheimer's Disease or a related disorder); or

(ii) A non-primary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

[57 FR 56506, Nov. 30, 1992; 58 FR 25784, Apr. 28, 1993]

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For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

Section 508 / Accessibility

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.

B. Contractor must subcontract a percentage goals listed below of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Business Program Manager. The letter must explain why a waiver is appropriate. The Director of the Office of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

For Goals by each purchasing category, please refer to www.montgomerycountymd.gov/mfd

C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.

D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.

E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.

F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.

G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

MONTGOMERY COUNTY, MARYLAND

MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR PERFORMANCE PLAN

Contractor's Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.
A Certification Letter must be attached.
For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor : _____

This subcontractor will provide the following goods and/or services: _____

2. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services: _____

_____

3. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services: _____

_____

4. Certified By: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
FEMALE HISPANIC AMERICAN NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services: _____

_____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

_____

_____

_____

_____

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

_____

_____

_____

_____

_____

G. A full waiver request must be justified and attached.

Full Waiver Approved: _____ Date: _____
MFD Program Officer

Partial Waiver Approved: _____ Date: _____
MFD Program Officer

Full Waiver Approved: _____ Date: _____
Director
Cherri Branson
Office of Procurement

Partial Waiver Approved: _____ Date: _____
Director
Cherri Branson
Office of Procurement

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No.) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

_____
Signature

_____
Typed Name

_____
Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

_____
Signature

_____
Typed Name

_____
Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

_____
Signature

_____
Typed Name

_____
Title

_____
Date

APPROVED:

_____ _____
Cherri Branson, Director, Office of Procurement Date

Section 7.3.3.4(a) of the Procurement Regulations requires:
The Contractor must notify the Director, Office of Procurement of any proposed change to the Subcontractor Performance Plan.

Wage Requirements for Services Contract
Addendum to The General Conditions of Contract Between County and Contractor

A. This contract is subject to the Wage Requirements Law, found at Section 11B-33A of the Montgomery County Code ("WRL" or "11B-33A"). A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the WRL, subject to the exceptions for particular contractors noted in 11B-33A (b) and for particular employees noted in 11B-33A (f).

B. Conflicting requirements (11B-33A (g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

C. A nonprofit organization that is exempt from the WRL under 11B-33A (b)(3) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. Section 11B-33A (c)(2).

D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement in 11B-33A.

E. Each contractor and subcontractor covered under the WRL must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the wage requirements. Section 11B-33A (h).

F. An employer must comply with the WRL during the initial term of the contract and all subsequent renewal periods, and must pay the adjusted wage rate increase required under 11B-33A (e)(2), if any, which is effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.

G. An employer must not discharge or otherwise retaliate against an employee for asserting any right, or filing a complaint of a violation, under the WRL.

H. The sanctions under Section 11B-33 (b), which apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements of the WRL.

I. The County may assess liquidated damages for any noncompliance by contractor or its subcontractor with the WRL based on the rate of 1% per day of the total contract amount, or the estimated annual contract value of a requirements contract, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. If the County determines, as a result of a WRL audit that the Contractor has violated requirements of the WRL, including but not limited to the wage requirements, the County will assess the Contractor for the cost incurred by the County in conducting the audit. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action against the violating contractor or subcontractor enforce the payment of wages due under the WRL and recover from the Contractor or subcontractor any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation by the Contractor or subcontractor arising from the employee asserting any right, or filing a complaint of violation, under the WRL.

J. The County has established a program of random audits to assure compliance with the WRL. The Director may conduct an on-site inspection(s) for the purpose of determining compliance. Some of the documents that may be required during an audit are listed on the Wage Requirements Law FAQ web page: http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html

K. The Contractor is in breach of this contract if the Contractor fails to submit timely documentation demonstrating compliance with the WRL to the satisfaction of the Director, including: the Wage Requirements Law Payroll Report Form (PMMD-183), which is required to be submitted by the end of the month (January, April, July, October) following each quarter; documents requested in conjunction with a random or compliance audit being conducted by the County; or documents otherwise requested by the Director. In the event of a breach of contract under this paragraph, or for any other violation of the WRL, the County may assess against, or withhold from payment to, Contractor, the liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a

result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

L. For any questions, please contact the Wage Requirements Law Program Manager at 240-777-9918 or WRL@montgomerycountymd.gov .

[Remainder of Page Intentionally Left Blank]

Contract #_____

Wage Requirements Law Certification

(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Provide, in the spaces below, the contact name and information of the individual designated by your firm to monitor your compliance with the County's Wage Requirements Law, unless exempt under Section 11B-33A (b) (see Section B. below):

Contact Name		Title	
Phone Number		Fax Number	
E-mail Address			

In the event that you, the "Offeror," are awarded the contract and become a Contractor, YOU MUST MARK ☑ or ☒ in ALL BOXES BELOW that apply.

☐ A. Wage Requirements Compliance

This Contractor, as a "covered employer", will comply with the requirements under County Code Section 11B-33A, "Wage Requirements" ("Wage Requirements Law" or WRL"). Contractor and its subcontractors will pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required wage rate effective at the time the work is performed. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A "covered employer" must submit (preferably via email) quarterly (by the end of January, April, July, and October for the quarter ending the preceding month) certified payroll records for each payroll period and for all employees of the contractor or a subcontractor performing services under the County contract governed by the Wage Requirements Law, to the Division of Business Relations and Compliance, Attn: Wage Requirements Law Program Manager. These payroll records must include the following: name; position/title; gender/race (for contracts awarded after October 1, 2015); daily straight-time hours worked; daily overtime hours worked; straight-time hourly pay rate; overtime hourly pay rate; both employer and employee share of health insurance premium; and total gross wages paid for each period. A sample of the Payroll Report Form can be found at the link below. (http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html). In lieu of the quarterly Payroll Report Form, payroll registers generally satisfy the requirement. Late submission or non-submission of this information, or any other violation of the WRL, may result in the County withholding contract payments and additional actions by the County, including but not limited to: assessing liquidated damages, terminating the contract, or otherwise taking action to enforce the contract or the Wage Requirements Law. The Contractor must ensure that NO Social Security number of any person, other than the last four digits, is included on the quarterly report.

B. Exemption Status (if applicable)

This Contractor is exempt from Section 11B-33A, "Wage Requirements," because it is:

1. Reserved – [Intentionally left blank].
2. ☐ a contractor who, at the time a contract is signed, has received less than $50,000 from the County in the most recent 12-month period, and will be entitled to receive less than $50,000 from the County under that contract in the next 12-month period. Section 11B-33A (b)(1);
3. ☐ a public entity. Section 11B-33A (b)(2).
4. ☐ a non-profit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A (b)(3) (**must complete item C below**).

☐ 5. an employer expressly precluded from complying with the WRL by the terms of any federal or state law, contract, or grant. Section 11B-33A (b)(7) (**must specify the law, or furnish a copy of the contract or grant**).

☐ C. Nonprofit Wage & Health Information

This Contractor is a non-profit organization that is exempt from coverage under Section 11B-33A (b)(3). Accordingly, the contractor has completed the 501 (c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form, which is attached. See Section11B-33A (c)(2).

☐ D. Nonprofit's Comparison Price(s) (if desired)

This Contractor is a non-profit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blanket-cost quotation sheet on which it is submitting its price(s) in the RFP, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the WRL. For proposal evaluation purposes, this price(s) will be compared to price(s) of another nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the WRL. This revised information on the duplicate cost sheet must be clearly marked as your nonprofit organization comparison price(s). In order for the County to compare your price(s), the revised information on the duplicate cost sheet must be submitted with your offer on or before the offer opening date, must show how the difference between your nonprofit organization price(s) and other organization comparison price(s) was calculated. Section 11B-33A (c)(2).

☐ E. Sole Proprietorship

Sole Proprietorships are subject to the WRL. In order to be excused from the posting and reporting requirements of the WRL, the individual who is the sole proprietor must sign the certifications below in order to attest to the fact that the Sole Proprietorship:

(1) is aware of, and will comply with, the WRL, as applicable;
(2) has no employees other than the sole proprietor; and
(3) will inform the Montgomery County Office of Business Relations and Compliance if the sole proprietor employs any workers other than the sole proprietor.

Contractor Certification

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	

Contract #_____

501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number		E-Mail	

Please provide below the employee labor category of all employee(s) who will perform direct measurable work under this contract, the hourly wage the organization pays for that employee labor category, and any health insurance the organization intends to provide for that employee labor category:

Employee Labor Category	Wage per Hour	Name of Health Insurance Provider(s) and Plan Name* (e.g. ABC Insurer, Inc. , HMO Medical and Dental)

* IF NO HEALTH INSURANCE PLAN IS PROVIDED PLEASE STATE "NONE".

Application Form
Open Solicitation #1014084
Pre-Admission Screening and Resident Review (PASRR)

Name of Applicant/Vendor: _____

(Legal Name as it appears on Articles of Incorporation or Social Security card)

Federal Taxpayer Identification # (TIN): _____

Address: _____

City and State: _____ Zip Code: _____

Primary Contact Name: _____

E-mail Address (if applicable): _____

Phone #: _____ Fax #: _____

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

Acknowledgment:
I have received a copy of the packet for Open Solicitation #1014084, 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

REFERENCES FORM

Open Solicitation #1014084
Pre-Admission Screening and Resident Review (PASRR)

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

As described in the Instructions and Minimum Qualifications document, which is part of Open Solicitation #1014084, 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: _____

SERVICE CHECKLIST
Open Solicitation #1014084
Pre-Admission Screening and Resident Review (PASRR)

To indicate which services the Contractor is proposing to provide, the Contractor must check off at least one item, below:

_____ NURSE

_____ SOCIAL WORKER

_____ PSYCHOLOGIST

_____ PSYCHIATRIST

MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - "Minority Contracting", Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of $50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement, or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program, Office of Business Relations and Compliance at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Virginia Small, Women & Minority-Owned Business: Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.

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.
Deputy Privacy Official
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.

MONTGOMERY COUNTY, MARYLAND

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

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: _____