

**Open Solicitation Plan  
For**

**Open Solicitation #1168152 – Individualized Supportive Services for Children and Adults  
with Intellectual or Developmental Disabilities**

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

Section 4.1.6.3 Procedure

- (1) Public Notice – Notice for this solicitation will be posted on the Montgomery County, Office of Procurement website. Additionally, DHHS will send a copy of the notice to current providers, whose contracts will be replaced by contracts awarded under this Open Solicitation.
- (2) Application Process – The DHHS Contract Management Team (CMT) will post a copy of the solicitation packet for this Open Solicitation at: <https://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. The solicitation packet includes the following: 1) the Notice to Vendors that summarizes this Open Solicitation; 2) the Instructions and Minimum Qualifications document for this Open Solicitation; 3) the Application; and 4) the Pre-approved Form Contract including the Scope of Services and General Conditions of Contract Between County and Contractor and other attachments.
- (3) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum requirements that applicants must meet. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the solicitation criteria.
- (4) All applicants meeting the minimum qualifications listed in the Open Solicitation and are found to be responsible will be eligible to receive a contract to provide the services described in the Open Solicitation. Referrals for will be based on client’s requests and service needs, geographic location, language, Contractor’s ability to provide the services needed and availability to meet the client’s need, as determined by the County.
- (5) Pre-Approved Form Contract – A Pre-Approved Form Contract is included in the solicitation packet. The solicitation packet also contains a description of the requirements identified on the Pre-approved Form Contract (referred to as Scope of Services). Applicants will be required to execute a contract with the County using this Pre-Approved Form Contract, including the General Conditions of Contract Between the County and Contractor (“General Conditions”), without modification.
- (6) Cost – The cost of contracts will not exceed available appropriations. Prior to encumbrance of funds for contracts awarded under this Open Solicitation, the total

available appropriation for the contracts will be verified by DHHS. Funds will be encumbered under contracts via a purchase order. The County's Contract Monitor will monitor expenditures for each executed contract against the purchase order and any subsequent delivery orders that the Office of Procurement authorizes.

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

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

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## NOTICE TO VENDORS

### **Open Solicitation #1168152 Individualized Supportive Services for Children, and Adults with Intellectual or Developmental Disabilities**

Montgomery County, Maryland, through its Department of Health and Human Services (DHHS), Aging and Disabilities service area (A&D), is seeking applications from qualified, experienced, and culturally competent entities and private practitioners to provide a program of wraparound and individualized supportive services to children and adults with intellectual or developmental disabilities.

This Open Solicitation contains three (3) Service Categories:

- Scope 1: Supported Employment Services;
- Scope 2: Child Care, Before & After School Care, Saturday, and School Break Programs;
- Scope 3: Emergency Personal Care/Nursing.

Qualified applicants may apply for a contract to provide services in one or more scopes.

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

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

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

Questions regarding this solicitation should be emailed to:

[HHS.Open.Solicitations@montgomerycountymd.gov](mailto:HHS.Open.Solicitations@montgomerycountymd.gov)

## INSTRUCTIONS AND VENDOR INFORMATION

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

Please complete and attach all the below-listed mandatory submission/application documents and e-mail to: [HHSCSN@montgomerycountymd.gov](mailto:HHSCSN@montgomerycountymd.gov)

Or Mail: Department of Health & Human Services  
401 Hungerford Drive, Rockville, Maryland 20850  
Attn: Individualized Supportive Services for Children and Adults with  
Intellectual or Developmental Disabilities, 2<sup>nd</sup> Floor

The County intends to award multiple contracts under Open Solicitation #1168152. The County, however, makes no guarantee that any Contractor will receive a minimum number of clients or any referrals from the County, for provision of these services resulting from this Open Solicitation. Contractor work assignments will be based on client's requests and service needs, geographic location, language, Contractor's ability to provide the services needed and availability to meet the client's need, as determined by the County. Applicants will not receive preference in the award process for offering to provide services under more than one scope of services. The Contractor may begin providing services to clients only after it has completed and passed the criminal and Child Protective Services (CPS) background check, received an executed contract, a purchase order and a Notice to Proceed with services, from the County. The County reserves the right to increase or decrease the minimum or maximum number of hours specified in each scope based on the availability of funding. The County reserves the right to cancel this Open Solicitation at any time.

Questions related to open solicitation should be directed to:  
[HHS.Open.Solicitations@montgomerycountymd.gov](mailto:HHS.Open.Solicitations@montgomerycountymd.gov)

- I. Submission/Application Documents - The following items must be submitted:
  - A. Form Contract - The Form Contract must be filled out correctly and submitted. Please follow these steps:
    1. Sign the Form Contract
      - a. If the applicant is a corporation, an officer of the corporation with authority to sign contracts for the corporation must sign the Form Contract.
      - b. On the signature page of the Form Contract, please do not put a date in the paragraph. Enter the date in the signature block.
    2. Submit all the pages of the Form Contract (not just the signature page), including all attachments.

- B. General Conditions of Contract Between County & Contractor (Attachment A)  
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-45.pdf>
- C. Business Associate Agreement (Attachment B)  
<https://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>
- D. Application/Vendor Information Form (Attachment C) - Please complete in its entirety. Applicants must check-off profit, non-profit, or sole proprietorship designation.
- E. Scope of Service Selection Form (Attachment D) - An applicant may propose to provide one or more scopes of service.
- F. Minority Business Program & Offeror's Representation (Optional) Applicants are encouraged to also complete Attachment E.
- G. Resumes - If applying as an individual, please provide a copy of your resume. If an agency or organization is applying, please provide a resume for each person who would provide Supported Employment Services, and/or Child Care, Before & After Care, – Saturday, School Break Programs, and/or Emergency Personal Care/Nursing. Management/Nursing Services, under the contracts resulting from this Open Solicitation.
- H. References – Please provide three (3) references including, address and phone number of each reference who can attest to your or the organization's experience and accomplishments in the provision of services similar/relevant to the scope of services of the application.
- I. Narrative - A description of applicant's organization area of specialty, knowledge of and experience with provision of the selected scope(s) of services, as requested by the County, to children, youth, and adults with intellectual or developmental disabilities, knowledge of and experience with relevant laws for the provision of services to this population of clients, including the Code of Maryland Regulations (COMAR). This information must be provided in no more than seven (7) pages, double-spaced using Times New Roman and 12-point font.
- J. License/Certificate – For Child Care agencies the applicant must submit a current license/certificate from the Maryland Office of Child Care authorizing the provider to serve children.
- K. Insurance Certificate - A Certificate(s) of Insurance that provides evidence of meeting the insurance requirements set forth in Article IX. of the Pre-Approved Form Contract. Contact your insurance broker to obtain the Certificate.
- L. Minority, Female Disabled (MFD) Person Subcontractor Performance Plan  
Please submit your MFD plan or request a waiver.  
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf>

- H. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor  
[www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf](http://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)
- I. Proof of legal name – Please provide Articles of Incorporation and Articles of Amendment, if applicable.
- J. Proof of tax – Please provide a W-9.
- K. Financial Information – All applicants must submit additional information as requested by the County to help determine financial responsibility and to resolve any questions concerning the organization’s financial soundness. In the case of a sole proprietor, an applicant must submit the prior year’s tax return.
- L. Proof of tax-exempt status  
Determination letter from IRS, if applicable.
- M. Certificate of Good Standing from the Maryland State Department of Assessments and Taxation

## BACKGROUND

- A. Montgomery County, Maryland, through its Department of Health and Human Services (DHHS), Aging and Disabilities service area (A&D), is seeking applications from qualified, experienced, and culturally competent entities and private practitioners to provide a program of wraparound and individualized supportive services to children and adults with intellectual or developmental disabilities (“clients”) referred by DHHS Community Support Network for People with Disabilities (CSN). The specifics of the Individualized Case Plan, or other approved treatment plan, for each child, adolescent, or adult placed under this Contract are in addition to the general specifications of the Scope of Services provided under this Contract.
- B. The services required by the County under contracts resulting from Open Solicitation 1168152 include the following service categories:
  - a. Scope 1: Supported Employment Services;
  - b. Scope 2: Child Care, Before & After School Care, Saturday, and School Break Programs;
  - c. Scope 3: Emergency Personal Care/Nursing.
- C. The Contractor was selected under Open Solicitation #1168152 Individualized Supportive Services for Children, and Adults with Intellectual or Development Disabilities, to provide services in accordance with the Open Solicitation and this Contract.

## INTENT

The County intends to award multiple contracts under Open Solicitation #1168152. The County, however, does not guarantee that any contractor will receive a minimum number of clients or any referrals from the County, for provision of these services. Contractor work assignments will be based on client’s requests and service needs, geographic location, language, Contractor’s ability to provide the services needed and availability to meet the client’s need, as determined by the County. The County will confirm the Contractor’s availability with the Contractor prior to formally assigning or referring the client to the Contractor for services. Applicants will not receive preference in the award process for offering to provide services under more than one Scope of Services. The County reserves the right to increase or decrease the minimum or maximum number of hours specified in each scope based on the availability of funding.

### I. SCOPE OF SERVICES

**Services to clients must be community-based and person centered. Clients who are referred by the County will reflect the cultural diversity of Montgomery County. Services must be provided in a facility that is convenient to public transportation and handicapped accessible, or may be home-based, if appropriate.**

**A. SCOPE 1: *Supported Employment Services***

The Contractor must provide a program of individualized supportive employment services approved by the County to adults with intellectual or developmental disabilities. The Contractor must provide clients with training and support that build upon clients' unique talents, skills, and abilities, to assist clients to find and maintain employment. The Contractor must assist individuals in their employment to make informed choices in designing their unique pathway to increased independence, integration, inclusion, productivity, and self-determination. Referrals for services will be made by the DHHS based on the factors listed in the "Intent" section of this Contract. The Contractor must provide the following phases (1, 2, & 3) of services:

**1. Phase 1 - Preplacement Activities**

- a) Job Development - The Contractor must provide support services for clients to assist them in obtaining jobs in competitive integrated employment settings; and
- b) Training – To enable clients to obtain employment, the Contractor must provide appropriate training to clients (which can include training at employer sites) and assist clients with resume-writing skills, and training on how to successfully interview for jobs.

**2. Phase 2 - Intensive Job Coaching** - The Contractor must provide clients with the support necessary for them to learn their jobs and to complete assigned job tasks, whether a client is beginning a new job, has been promoted to a new position, or after a meaningful change in duties or circumstances. The Contractor must provide clients with individualized/tailored support, as needed, so that the client may successfully maintain his/her job.

**3. Phase 3 - Extended support services** - The Contractor must provide ongoing support services to clients including monitoring through phone check-ins, site visits, lunch meetings, and reviewing job evaluations either at the client's job site or in the Contractor's office.

**B. SCOPE 2 – *Child Care, Before & After School Services, Saturday, and School Break Programs***

The Contractor must provide support services to youth with autism and other developmental disabilities. These programs must emphasize community-based instruction, positive behavior management, and the development of independence for each client participant. These services must be provided either before or after school, on Saturdays, and during school breaks (based on Montgomery County Public Schools calendar). The Contractor must strongly encourage clients



to participate in the program's daily activities. Client referrals will be made by DHHS based on the factors listed in the "Intent" section of this Contract. ***Clients served under this Contract cannot be in residential services<sup>1</sup>.***

The following three categories of services must be provided in consultation with DHHS staff. Client/family need will determine the category/categories of services they receive from the following:

**Intensity Level 1:**

Provides supervision to children and youth in the home or in a specialized setting (e.g., after-school program, holiday break program), designed to provide the children with the support they need to engage in program activities. Clients under Intensity Level 1 services do not exhibit the behaviors listed under Intensity Level 2 or 3 (they require a lower level of support).

**Intensity Level 2:**

Provides supervision to children and youth in the home or in a specialized setting (e.g., after-school program, holiday break program), designed to provide the children with the support they need to engage in program activities. Children, youth, and young adults receiving services under this Intensity Level must meet the following requirements:

1. Clients either exhibit extreme and regularly occurring behaviors that endanger self or others (e.g., head banging, hitting, biting, scratching, bolting, non-eating, head-butting, pica); or
2. **Exhibit two or more of the following three behaviors:**
  - a. Client requires major and regular assistance to complete functional life skills (e.g., dressing, toileting, bathing).
  - b. Client has extreme difficulty or inability to engage in leisure activities independently, for more than a few minutes at a time or not at all.
  - c. Client is severely impacted by significant family factors (e.g., mental/physical health of caregivers, other children with special needs in the home, other family members requiring special care, job requirements of caretakers, family constellation).

**Intensity Level 3:**

Provides a program of applied behavioral intervention to children, youth, and young adults who meet the criteria for Intensity Level 2 **and** who are in crisis or at imminent risk of being placed out of the home, as a means to facilitate a successful transition from one placement to another.

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<sup>1</sup> Residential services for individuals with disabilities typically are funded through Developmental Disabilities Administration (DDA) and therefore clients receiving residential services would not be eligible to receive Scope 2 service under this contract.

This level of intervention is designed to meet an intense, short term need and requires persons who are formally trained and monitored by the Contractor's Behavioral Specialist and/or Case Manager. Intensity Level 3 services are specifically identified as to frequency and duration when requested by the County Case Manager in accordance with the Plan of Care or other approved treatment plan. For this Intensity Level, referrals will be made by the County based on the factors listed in the "Intent" section of this Contract. In some cases, referrals will be part of an overall Service Plan or Plan of Care or other approved treatment plan. In addition to any individual treatment plan created for the client, the Contractor must also be compliant with all Scope of Services requirements as stated in this Contract.

**C. SCOPE 3 - *Emergency Personal Care/Nursing Services***

The Contractor must provide emergency temporary personal care/nursing services to children and adults with developmental disabilities. Emergency services must be provided within 24 hours of the request for service from DHHS. Certified Nursing Assistant services must include services such as personal care services, hygiene to assist with bed baths and care of mouth, skin and hair, assisting in bathroom use or in using a bedpan, helping in and out of bed, assisting with ambulation, transferring from bed to wheelchair, assisting with equipment such as walkers and crutches, helping with prescribed exercises and tasks which have been taught by professional health personnel, and assisting with a medically prescribed regimen. The Registered Nurse level of services requires skilled nursing care and is delivered by a licensed health practitioner.

Referrals will be made by the County based on the factors listed in the "Intent" section of this Contract. In some cases, the referrals will be part of an overall Service Plan or Plan of Care for the client, which is developed at the time of diagnosis and is updated yearly to address needs and/or update services for the client. As a result, the Contractor must demonstrate the ability to function as part of a multi-disciplinary and/or inter-agency service delivery team.

**II. ADMINSTRATIVE AND QUALITY ASSURANCE REQUIREMENTS**

- A. The Contractor must abide by all applicable Federal, State, and local laws and regulations, and all applicable guidelines, policies, and procedures established by the County in the provision of services under this Contract.
- B. The Contractor must develop, implement, and maintain a system of written records which meet the County's program requirements. The Contractor must make available to the County all client records upon request by the County. Each client's record must be available for review by County staff.
- C. All personnel providing direct services under this contract must meet minimal professional

requirements of the State of Maryland for the professional licenses held, and maintain their credentials in good standing, as required by the professional discipline.

- D. The Contractor must comply with DHHS Background Clearance policy requirements for staff, subcontractor and volunteers serving clients (please see link below for policy).  
<http://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>
- E. The Contractor must also sign a Business Associate Agreement with the County prior to execution of this Contract (Attachment B) and must comply with the provisions in the attached Business Associate Agreement.
- F. The Contractor and/or its subcontractors and consultants must comply with all federal, State and local laws and regulations governing privacy and the protection of health information. The Contractor must execute formal agreements with other services providers in accordance with federal and State confidentiality regulations and the Health Insurance Portability and Accountability Act (HIPPA) or with appropriate release of information by the Client.

### III. STAFFING REQUIREMENTS

The Contractor must ensure that all staff vacancies are filled promptly. If an unfilled vacancy is impacting service provision, the Contractor must provide documentation to the Contract Monitor of all its efforts to hire staff. The Contractor must ensure that services are provided in a timely and efficient manner.

#### Scope 1 – Supported Employment Services

The Contractor must provide direct management support and regular supervision of personnel (who may be Contractor's staff or independent contractors retained by the Contractor), for all work requested by the County, to ensure continuous quality service delivery. The Contractor must:

- A. Obtain copies of all resumes, licenses, background clearances, references, and credentials for all personnel who perform work under this Contract prior to the execution of this Contract and maintain copies of these documents on file;
- B. Maintain regular communication with the County Case Manager and/or the Contract Monitor, including communication of contracting issues and/or issues related to families served as they arise, in the event of an urgent client issue, the Contractor must contact the County Case Manager and/or the Contract Monitor within 24 hours (or next business day, if the issue arose on a weekend or County holiday); and

- C. Provide regular supervision to all personnel providing direct services under this Contract.

**Scope 2 – Child Care, Before & After Care, Saturday and School Break Programs**

The Contractor must provide direct management support and regular supervision of personnel (who may be Contractor’s staff or independent contractor retained by the Contractor), for all work requested by the County, to ensure continuous quality service delivery. The Contractor must:

- A. Obtain copies of all resumes, licenses, background clearances, references, and credentials for all personnel who perform work under this Contract prior to the execution of this Contract and maintain copies of these documents on file;
- B. Maintain regular communication with the County Case Manager and/or the Contract Monitor, including communication of contracting issues and/or issues related to families served as they arise, in the event of an urgent client issue, the Contractor must contact the County Case Manager and/or the Contract Monitor within 24 hours (or next business day, if the issue arose on a weekend or County holiday); and
- C. Provide regular supervision to all personnel providing direct services under this Contract.

**Scope 3 – Emergency Personal Care/Nursing Services**

The Contractor must provide direct management support and regular supervision of personnel (who may be Contractor’s staff or independent contractor retained by the Contractor), for all work requested by the County, to ensure continuous quality service delivery. The Contractor must:

- A. Obtain copies of all resumes, licenses, background clearances, references, and credentials for all personnel who perform work under this Contract prior to the execution of this Contract and maintain copies of these documents on file;
- B. Maintain regular communication with the County Case Manager and/or the Contract Monitor, including communication of contracting issues and/or issues related to families served as they arise; and
- C. Provide regular supervision to all personnel providing direct services under this Contract.

#### **IV. MINMUM QUALIFICATIONS**

Based on the Contractor's selected service category/categories (Scope), the Contractor must possess and maintain, throughout the term of the Contract, the following minimum qualifications, and comply with the requirements herein indicated for the service category/categories. Except for contractors that are sole proprietors, all agencies/organizations awarded contracts from Open Solicitation #1168152 must be registered to do business in the State of Maryland.

##### **Scope 1 – Supported Employment Services**

The Contractor must be licensed by the Developmental Disabilities Administration (DDA) to provide Employment Services. The Contractor must also be a vendor with the Department of Rehabilitative Services (DORS). The direct service professional (i.e., employment specialist) must have a Bachelor's degree.

##### **Scope 2 – Child Care, Before & After Care, Saturday and School Break Programs**

The Contractor must ensure that all personnel (who may be Contractor's staff or independent contractors retained by the Contractor) and volunteers are properly trained to work with children and youth with developmental disabilities, including training in personal care, augmentative communication, and behavior management.

For Child Care agencies – the Contractor must maintain with the County a current license from the Maryland Office of Child Care, that authorizes the provider to serve children. All staff must also have the appropriate certifications and training based on Office of the Child Care guidelines.

##### **Scope 3 – Emergency Personal Care/Nursing Services**

The Contractor must ensure that all personnel (who may be Contractor's staff or independent contractors retained by the Contractor) rendering services under this Contract have current licenses and certifications. The Contractor must also be licensed by the Office of Healthcare Quality. Direct care personnel providing personal care/nursing services must be either (depending on the work assignment) a Certified Nursing Assistant or Registered Nurse licensed by the State of Maryland.

#### **V. REPORTS**

The Contractor must provide reports to the County, in a format approved by the County, no later than fifteen calendar days following the month in which services were provided. These reports must accompany the monthly invoice and must include the following information, at a minimum, as applicable to the services provided:

##### **Scope 1 – Supported Employment Services**

- A. The Contractor's invoice must include hours charged within each category (Preplacement, Job Coaching, Extended Support), the dates of client sessions and show the year to date totals for charges for each client.
- B. The Contractor must include a confirmation that each client is on the Department of Rehabilitative Services (DORS) waiting list. In addition, once a quarter, the Contractor must verify that the client is still on the DORS waiting list and inquire about any changes in the availability of DORS funding based on the client's needs.
- C. Personnel update on criminal background changes or new hires.

**Scope 2– Child Care, Before & After Care, Saturday and School Break Programs**

- A. Summary of client services provided during billing month.
- B. Dates of client consultation/session(s) and billing hours.
- C. Personnel update on criminal background changes or new hires.

**Scope 3 – Emergency Personal Care/Nursing Services**

- A. Summary of client services provided during billing month.
- B. Dates of client consultation/session(s) and billing hours.
- C. Personnel update on criminal background changes or new hires.

**VI. COMPENSATION**

- A. The County's set compensation for Contracts awarded as a result of Open Solicitation #1168152, is as per Attachment E, Fixed Rate Schedule which will also be posted on the DHHS website at <https://www.montgomerycountymd.gov/HHSProgram/COO/ContractMgmt/CMTCurSolicits.html>. The rates are inclusive of all administrative costs and overhead to include salaries, telephone, office supplies, computer usage, etc. This rate applies to all services provided to the County by the Contractor. The fixed rate also applies to meetings that the County requires the Contractor to attend.
- B. The County may, at its option, and as fiscal appropriation allows, adjust the rates for the Contract at the beginning of the County's Fiscal Year, which begins on July 1, of each year.

Price increase requests beyond the County's set forth Fixed Rate Schedule, , will not be approved. In the event these rates change, within 30 days of the effective date, the DHHS Director or her/his designee will promptly notify the Director, Office of Procurement, and the Contractor and forward the updated Rate Schedule, indicating the effective date of the new rates.

C. No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and Notice(s) to Proceed and the Contractors receipt of said County Purchase Order containing a total compensation amount. Compensation must not exceed funds appropriated by the County and encumbered into the County Purchase Order issued to the Contractor.

D. No minimum number of hours is guaranteed to any Contractor under this Contract.

## VII. INVOICES

The Contractor must submit invoices electronically with all required reports and 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 rates set forth in Article VI. Compensation.

## VIII. TERM

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

## IX. GENERAL CONDITIONS AND INSURANCE

The General Conditions of Contract Between Contractor and County ("General Conditions") are incorporated by reference and made part of this Contract as Attachment A. The following insurance requirements supersede those outlined in Provision 21, Insurance, of the General Conditions:

**MANDATORY MINIMUM INSURANCE REQUIREMENTS** – Individualized Supportive Services for Children, and Adults with Intellectual or Developmental Disabilities

**SCOPE 1: Support Employment Services** – provide clients with training and support that build upon clients' unique talents, skills and abilities, to assist clients to find and maintain work

**SCOPE 2: Child Care, Before & After School Services, Saturday, and School Break Programs** – Support services to youth with autism/developmental disabilities, emphasizing on community-

based instruction, positive behavior management and development of independence for each client participant

**SCOPE 3: Emergency Personal Care Management/Nursing Services – Certified Nursing Assistant to Registered Nurse**

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

Commercial General Liability

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

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations
- Sexual Molestation and Abuse – \$1,000,000 limit required**

Worker's 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***

Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

***Each Claim \$1,000,000***

*In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.*



Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

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  
HHS / Contract Management Team  
401 Hungerford Drive, 6<sup>th</sup> floor  
Rockville, MD 20850

**X. CONTRACT ADMINISTRATOR**

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

**XI. PRIORITY DOCUMENTS**

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

1. This Contract Document;
2. The General Conditions of Contract Between County and Contractor (Attachment A);
3. Business Associate Agreement (Attachment B);
4. Application/Vendor Information Form (Attachment C);
5. Scope of Services Selection Form (Attachment D); and
6. Fixed Rate Schedule (Attachment E).

SIGNATURE PAGE FOLLOWS

Open Solicitation #1168152  
FORM CONTRACT # \_\_\_\_\_

Signature Page

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

*Part A: Contractor's Offer to Provide Services:*

(Prospective Contractor Must Complete)

Contracting Corporation, Partnership Limited Liability Company OR Proprietorship

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*Part B: County Acceptance:*

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_  
Avinash Shetty, Director  
Office of Procurement

\_\_\_\_\_  
Date

RECOMMENDATION

\_\_\_\_\_  
{Director's Name}, Director  
Department of Health and Human Services

\_\_\_\_\_  
Date

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

## GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY &amp; CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

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

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

2. AMERICANS WITH DISABILITIES ACT

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

3. APPLICABLE LAWS

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

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

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

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

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

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

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

4. ASSIGNMENTS AND SUBCONTRACTS

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

5. CHANGES

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

6. CONTRACT ADMINISTRATION

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

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

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

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

#### 7. COST & PRICING DATA

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

#### 8. DISPUTES

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

#### 9. DOCUMENTS, MATERIALS, AND DATA

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

#### 10. DURATION OF OBLIGATION

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

#### 11. ENTIRE AGREEMENT

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

#### 12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

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

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

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

#### 13. GUARANTEE

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

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

14. HAZARDOUS AND TOXIC SUBSTANCES

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

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

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

16. IMMIGRATION REFORM AND CONTROL ACT

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

17. INCONSISTENT PROVISIONS

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

18. INDEMNIFICATION

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

19. INDEPENDENT CONTRACTOR

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

20. INSPECTIONS

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

21. INSURANCE

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

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

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

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

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

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

\*Professional services contracts only

**(Remainder of Page Intentionally Left Blank)**

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

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

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

**(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. INFORMATION SECURITY

### A. Protection of Personal Information by Government Agencies:

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

### B. Payment Card Industry Compliance:

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

## 24. NON-CONVICTION OF BRIBERY

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

## 25. NON-DISCRIMINATION IN EMPLOYMENT

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

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

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

## 26. PAYMENT AUTHORITY

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

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

## 27. P-CARD OR SUA PAYMENT METHODS

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

## 28. PERSONAL PROPERTY

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

## 29. TERMINATION FOR DEFAULT

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

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



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

30. TERMINATION FOR CONVENIENCE

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

31. TIME

Time is of the essence.

32. WORK UNDER THE CONTRACT

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

33. WORKPLACE SAFETY

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

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

## BUSINESS ASSOCIATE AGREEMENT

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

### I. GENERAL

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

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

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

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

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

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

### II. DEFINITIONS.

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

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

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

### **III. PERMISSIBLE USE AND DISCLOSURE OF PHI**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **IV. TERM AND TERMINATION.**

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

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

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

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

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

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

C. Effect of Termination.

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

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

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

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

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



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

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

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

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

**X. MISCELLANEOUS.**

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

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

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

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

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_

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

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

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

SIGNATURE PAGE FOLLOWS

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

THE ARC MONTGOMERY COUNTY, INC.      MONTGOMERY COUNTY, MARYLAND

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

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

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

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

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

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

Title: Director, Department of Health  
and Human Services

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

**EXHIBIT A**

**FORM OF NOTIFICATION**

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

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

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

Description of the Incident:

\_\_\_\_\_  
\_\_\_\_\_

Date of the Incident: \_\_\_\_\_

Date of discovery of the Incident: \_\_\_\_\_

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

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

Number of individuals affected by the Incident:

\_\_\_\_\_

Names and addresses of individuals affected by the Incident:

(Attach additional pages as necessary) \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

---

Contact information to ask questions or learn additional information:

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**ATTACHMENT C**

**APPLICATION FORM /VENDOR INFORMATION FORM**

Please review and complete the following information for Individualized Supportive Services for Children and Adults with Intellectual or Developmental Disabilities. By signing this form, you are signifying that you have-received a copy of this Open Solicitation and understanding the requirements of this Open Solicitation.

\_\_\_\_\_  
Name of Firm or Individual

\_\_\_\_\_  
Contact Name/Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Tax Identification Number (TIN)\*

\_\_\_\_\_  
Email Address

\*Note: If Applicant does not have a TIN, the County will request the Applicant's Social Security Number at the time of Contract award in order to make payments for services rendered by the Applicant in accordance with the resulting Contract.

Profit or Non-Profit (please check one) Profit  Non-Profit  [Indicate type of non-profit corporation, i.e., 503c(3)]

Please provide the required licensure information for each person and language proficiency, if applicable. Use additional copies of this page if necessary.

**License(s)/Degree(s)**

**Language Proficiency**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTACHMENT D

SCOPE OF SERVICES SELECTION FORM

The attached application is for the following scope(s) of service. Check all that apply:

**Individualized Supportive Services for Children, and Adults with Intellectual  
or Developmental Disabilities**

1. Scope 1 – Supported Employment Services \_\_\_\_\_
2. Scope 2 – Child Care, Before & After School Care, Saturday, and School Break Programs \_\_\_\_\_
3. Scope 3 – Emergency Personal Care/Nursing \_\_\_\_\_

Open Solicitation #1168152

**Attachment E**

Individualized Supportive Services for Children, and Adults with Intellectual or  
Developmental Disabilities

**Fixed Rate Schedule**

**Scope 1 - Supported Employment Services** (rate listed below), the maximum amount any client may receive per County fiscal year is \$9,800, which applies only when a client requires all three services (Preplacement, Intensive Job Coaching, and Extended Support Services).

<b>Service</b>	<b>Rate</b>
Pre-placement - Phases 1 Includes Job Development & Training	\$70 per hour up to a maximum of 80 hours per fiscal year per client.
Intensive Job Coaching – Phase 2 Includes on-site job training or re-training of tasks and skills necessary for the client to be successful on the job, including formal meetings with the client’s supervisors at the job site.	\$70 per hour up to a maximum of 60 hours per fiscal year per client.
Extended Support Services – Phase 3 Includes monitoring through phone check-in, site visits, lunch meetings, and reviewing job evaluations either at the job site or in the Contractor’s office.	\$70 per hour up to a maximum 80 hours per fiscal year per client.

**NOTE: The County’s fiscal year begins on July 1 and ends on June 30 of the following year.**



**Scope 2 - Child Care, Before & After School Services, Saturday, and School Break Programs**

The rates for services are established by the County, as follows:

<b>Service</b>	<b>Rate</b>
Intensity level 1	\$18 per hour
Intensity Level 2	\$25 per hour
Intensity Level 3	\$32 per hour

**Scope 3 - Emergency Personal Care Management/Nursing Services**

The rates for services are established by County, as follows:

<b>Service</b>	<b>Rate</b>
Certified Nursing Assistant	\$22 per hour
Registered Nurse	\$34 per hour

**ATTACHMENT F**  
**REFERENCE FORM**

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

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

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_

ZIP: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT PERSON'S EMAIL ADDRESS: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_

ZIP: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT PERSON'S EMAIL ADDRESS: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_

STATE: \_\_\_\_\_

ZIP: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT PERSON'S EMAIL ADDRESS: \_\_\_\_\_

## ATTACHMENT G

### 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 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 Manager, Division of Business Relations and Compliance at (240) 777-9912.

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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); Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.