

MCPS GENERAL CONTRACT ARTICLES

ARTICLE 1. DESCRIPTION AND GENERAL INTENT

For the purposes of these MCPS General Contract Articles, “MCPS” refers to the Board of Education of Montgomery County, which operates a system of public schools commonly known as Montgomery County Public Schools, and “Contractor” refers to the entity awarded a Contract pursuant to authorization by MCPS in accordance with applicable laws, Board of Education policies, and MCPS regulations. Together MCPS and the Contractor are collectively referred to as the “Parties” and each individually as a “Party.” The term “Contract” refers to these MCPS General Contract Articles and any other contract documents duly executed by the Parties that expressly incorporate these MCPS General Contract Articles by reference, as well as any request for proposals (RFP) or solicitation by MCPS, the Contractor’s proposal or bid in response, and any Contract award notification issued by MCPS.

ARTICLE 2. MCPS PROJECT CONTACT

The MCPS Project Contact is responsible for the technical and programmatic aspects of the Contract and is the technical and programmatic liaison with the Contractor. The MCPS Project Contact is responsible for the review and approval of any and all deliverables, products, and/or services, and such other responsibilities as may be specified in the Contract. The MCPS Project Contact is not authorized to make any commitments, otherwise obligate MCPS, or make any changes which affect the Contract price, terms, or conditions. Any Contractor requests for changes to the Contract price, terms, or conditions shall be referred to the Director of the MCPS Department of Materials Management or designee (DMM Director). No such changes shall be made without the written authorization of the DMM Director. The MCPS Project Contact may be changed at any time, provided that notification of the change, including the name and address of the successor MCPS Project Contact, is provided to the Contractor in writing. Any written notice by the Contractor to MCPS required under the Contract shall be provided to the DMM Director, with a copy to the MCPS Project Contact, using contact information available on the MCPS website.

ARTICLE 3. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor under the Contract and will in no way be considered to be an agent, partner, or employee of, or joint venture with, MCPS. Neither the Contractor nor its employees, agents, affiliates, or subcontractors will be entitled to any benefits, coverage, or other privileges made available to MCPS employees.

ARTICLE 4. KEY CONTRACTOR PERSONNEL

Any of the Contractor’s key personnel, identified as such in the Contract, are considered to be essential to the work being performed under the Contract. Prior to diverting any such key personnel to other programs, the Contractor shall notify the MCPS Project Contact reasonably well in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. No diversion shall be made by the Contractor without the written consent of the MCPS Project Contact. Failure to obtain the approval of the MCPS Project Contact as required or to propose replacement personnel acceptable to the MCPS Project Contact may be cause for termination pursuant to Article 13. MCPS reserves the right to require that the Contractor replace any key personnel or any individual charged to the Contract at any point during the Contract term if MCPS determines that this action is in its best interests.

ARTICLE 5. CONTRACTOR RESPONSIBILITY

- A. The Contractor shall furnish all personnel, materials, products, tools, services, and facilities necessary to perform the requirements set forth in the Contract. All deliverables, products, and/or services required by the Contract shall be submitted to the MCPS Project Contact according to the kinds and

dates indicated in the Contract. MCPS has relied upon the professional ability and training of the Contractor as a material inducement to enter into the Contract. The Contractor hereby agrees and warrants that all of the Contractor's work shall be performed in a professional and workmanlike manner, through only qualified and appropriately trained personnel, and consistent with the highest industry standards in compliance with applicable federal, state, and county laws and regulations—it being understood that acceptance of the Contractor's work by MCPS shall not operate as a waiver or release of the Contractor's obligations.

- B. The Contractor acknowledges and agrees that time is of the essence with respect to its obligations under the Contract and that prompt and timely performance of all such obligations, including conformance with all timetables and other requirements of the Contract, is strictly required.
- C. The Contractor shall obtain any licenses or permits necessary for performance of the work required under the Contract. In the event the work to be performed by the Contractor must by law or regulation be provided by individuals who are licensed and/or certified to provide certain Professional Services, the Contractor shall only assign individuals to perform work under the Contract who are licensed and/or certified in accordance with applicable law, and all such individuals shall maintain their license and/or certification in good standing (not under review or subject to suspension) during the entire term of the Contract. "Professional Services" for the purpose of the Contract shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by MCPS, the Contractor shall promptly submit documentation to the MCPS Project Contact that the individuals assigned to provide Professional Services under the Contract are properly licensed and/or certified.
- D. Any performance or bid bond obligations of the Contractor will be as described in the RFP or solicitation.
- E. Whenever the Contractor has knowledge that any actual or potential situation (including, but not limited to, labor disputes) delaying or threatening to delay the timely performance of the work under the Contract or a force majeure event as described in Article 7, the Contractor shall immediately give written notice, including all relevant information, to the DMM Director.
- F. The Contractor shall comply with all applicable federal, state, and county laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools. Board of Education policies and MCPS regulations are available at this link: www.montgomeryschoolsmd.org/departments/policy/. This obligation includes but is not limited to Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* ("Board Policy ACA"), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Consistent with Board Policy ACA and applicable federal, state, and county laws and regulations, the Contractor will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to these actual or perceived personal characteristics. In addition, the Contractor agrees to provide such accommodations as are required under federal, state, and county laws and regulations, including but not limited to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973.
- G. The Contractor shall provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations, Board of Education Policy IGN, *Preventing Alcohol, Tobacco, and other Drug Abuse in Montgomery County Public Schools*, and MCPS Regulation COF-

RA, Alcohol, Tobacco, and other Drugs on Montgomery County Public Schools Property.

- H. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 6. SUBCONTRACTORS

Work performed under the Contract shall not be subcontracted without advance written approval of the DMM Director; nor shall any substitution of subcontractors be made without such advanced approval in writing. The Contractor shall include provisions in its subcontracts requiring its subcontractors to comply with the Contract, to indemnify, defend, and hold harmless MCPS, and to provide insurance coverage for the benefit of MCPS, in a manner consistent with the Contract. The Contractor also shall cause its employees, agents, affiliates, and subcontractors to comply with the Contract and adopt such review, audit, and inspection procedures as are necessary to assure such compliance.

ARTICLE 7. FORCE MAJEURE

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic event. Should there be such an occurrence that impacts the ability of either Party to perform its responsibilities under the Contract, the nonperforming Party shall give immediate written notice to the other Party to explain the cause and probable duration of any such nonperformance. If the DMM Director determines that a failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of MCPS to invoke Articles 12 and 13.

ARTICLE 8. PAYMENT TERMS AND CONDITIONS

- A. The Contractor certifies that all information the Contractor has provided or will provide to MCPS is true and correct and can be relied upon by MCPS in awarding, modifying, making payments, or taking any other action with respect to the Contract including resolving disputes. Any false or misleading information is a ground for MCPS to terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. The Contractor certifies that the Contractor's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Contract's obligations, and produces reliable financial information.
- B. The prices, rates and other compensation for work performed is as described in the Contract.
- C. The Contractor's invoices shall be approved for payment by the MCPS Project Contact only after the MCPS Project Contact is satisfied that the Contractor is performing the work and has prepared the invoice as required by the Contract. Prior to approving any Contractor invoices for payment, MCPS, through any authorized representative, has the right at all reasonable times to inspect, or otherwise evaluate, the work performed or being performed at the premises on which it is being performed. If any inspection or evaluation is made by MCPS on the premises of the Contractor or any of its subcontractors, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of MCPS representatives in the performance of their duties. All inspections and evaluations shall be performed so that they will not unduly delay the work.
- D. Within thirty (30) days after receipt of each invoice and accepting the work, MCPS shall, except as provided in the Contract, pay for the work performed when approved by the MCPS Project Contact. A payment schedule will be jointly developed between MCPS and the Contractor.
- E. Regardless of any other provisions of the Contract, failure of the Contractor to submit required reports when due or failure to perform or deliver acceptable work, deliverables, products, or services will result

in MCPS withholding payments under the Contract unless such failure arises pursuant to Article 7 and without the fault or negligence of the Contractor. MCPS shall promptly notify the Contractor of its intention to withhold payment of any invoice submitted.

- F. MCPS is tax exempt as a governmental entity. The Contractor shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for its work. MCPS assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Contractor, its employees, agents, affiliates, and/or subcontractors by reason of the Contract.
- G. If at any time MCPS determines that a cost for which payment has been made is a disallowed cost, such as overpayment, MCPS shall notify the Contractor in writing of the disallowance or claim for unallowable costs. MCPS shall also state the means of correction, which may be, but shall not be limited to, adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

ARTICLE 9. CHANGES

The DMM Director may, at any time, make non-material changes that are within the original general scope of the Contract and the RFP or solicitation in any one or more of the following: (i) specifications or statement of work, and (ii) place of performance or delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of the Contract, whether changed or not changed by any such order, an equitable adjustment shall be made: (i) in the Contract price or time of performance or both; and/or (ii) in such other provisions of the Contract as may be so affected; and the Contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Article must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, however, if the DMM Director decides that the facts justify such action, the DMM Director may receive and act upon any such claim asserted at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Article 15.

ARTICLE 10. AUDIT AND DOCUMENT RETENTION

During the term and for three (3) years thereafter, the Contractor shall: (i) maintain complete and accurate books and records regarding its business operations relevant to the calculation of amounts payable under the Contract and any other information relevant to the Contractor's compliance with the terms and conditions of the Contract; and (ii) upon MCPS' request, make such books and records, as well as any of its employees, agents, affiliates, or subcontractors who might reasonably have information related to such records, available during normal business hours for inspection and audit by MCPS or its authorized representative, provided that MCPS shall: (a) provide the Contractor with reasonable prior notice of any audit; (b) undertake an audit no more than once per calendar year, except for good cause shown; and (c) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Contractor's normal business operations.

ARTICLE 11. TERM OF CONTRACT

Unless otherwise specified in the Contract, the term of Contract shall be for one year, provided that the Contract is not terminated pursuant to Article 12, 13, or 14. After the initial term, MCPS, in its sole discretion, reserves the right to extend the Contract if agreed to by both Parties.

ARTICLE 12. TERMINATION FOR CONVENIENCE

The Contract may be terminated in whole or in part by MCPS whenever the Superintendent of Schools, or an authorized designee, determines that such a termination is in MCPS' best interest. Any such termination shall be effected by delivery of a notice of termination to the Contractor, at least ten (10) business days prior to the

termination date. The notice of termination shall specify the extent to which performance shall be terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive just and equitable compensation for any work completed, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work. In the event of such termination, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.

ARTICLE 13. TERMINATION FOR CAUSE

A. Termination for Cause by MCPS

1. If, through any cause (other than as set forth in Article 7), the Contractor fails to fulfill in a timely manner its obligations under the Contract, or if the Contractor violates any of the covenants, agreements or stipulations of a Contract (hereinafter a "Default"), MCPS shall have the right to terminate the Contract, in addition to MCPS' remedies in the Contract and all other rights available at law or in equity. Such termination shall be effected by MCPS delivering a written notice of termination to the Contractor, which notice may, in the sole discretion of MCPS, provide for a period of up to thirty (30) days for the Contractor to cure the Default. If MCPS provides for an opportunity to cure the Default and the Default is not remediated within the specified period, as determined by MCPS, MCPS shall issue a final notice of termination specifying the effective date of such termination.
2. A Contractor bankruptcy or bankruptcy event shall be deemed grounds for a termination for cause.
3. In the event of such termination for cause, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.
4. A termination for cause is a termination for convenience if the termination for cause is later found to be without justification.
5. The Contractor shall be entitled to receive just and equitable compensation for any work completed prior to termination, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work.
6. Notwithstanding the foregoing provisions, the Contractor shall not be relieved of liability to MCPS for damages sustained by MCPS by virtue of any breach of Contract by the Contractor for the purposes of set off, until the exact amount of said damages is ascertained.

B. Termination for Cause by the Contractor

1. If, through any cause (other than as set forth in Article 7), MCPS is in breach of the Contract and has not cured such breach within thirty (30) days of written notice from the Contractor specifying the same, the Contractor shall have the right to immediately terminate the Contract. Such termination shall be effected by delivering a notice of termination to the DMM Director specifying the effective date of such termination.

ARTICLE 14. NON-APPROPRIATION

If the term of the Contract, or any Contract extension, extends beyond the end of the MCPS fiscal year (July 1 to June 30) in which the Contract was awarded or extended, and the approved MCPS budget for the subsequent fiscal year does not appropriate sufficient funds that may be utilized for the Contract, the Contract shall no longer be in force and effect upon the expiration of the current fiscal year funding. In this event, upon expiration of the

current fiscal year funding, MCPS shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under the Contract, and the Contractor shall not be obligated to perform any further work under the Contract. If the approved MCPS budget for the subsequent fiscal year reduces funding available for the Contract, MCPS shall have the option, in its sole discretion, to cancel the Contract with no liability occurring to MCPS, or offer a Contract amendment to the Contractor reflecting the reduced amount, which the Contractor may accept in lieu of termination.

ARTICLE 15. DISPUTES

The Parties shall collaborate to resolve any disputes arising under the Contract. In the event that the Parties are not able to resolve a dispute concerning a question of fact arising under the Contract, the dispute shall be submitted in writing to the DMM Director for a determination. The Contractor may appeal the decision of the DMM Director in writing to the Superintendent of Schools, whose decision shall be final. This Article does not preclude consideration of questions of law arising under the Contract, provided that nothing in the Contract shall be construed as making final the decision of any MCPS official, representative, or the Board of Education on a question of law. The Parties specifically agree that no dispute or cause of action arising out of the Contract shall be submitted to arbitration or mediation, and the Parties waive any right to a jury trial in any court of competent jurisdiction.

ARTICLE 16. CONTRACTOR INTEGRITY, ETHICS, AND CONFLICTS OF INTEREST

- A. The Contractor is prohibited from using the services of MCPS employees or officials (including Board of Education members) in performing the Contract. Former employees or officials may be used, provided that a 12-month period has elapsed since their last employment at MCPS. A former MCPS employee or official, may not assist or represent the Contractor for compensation in any case, controversy, dispute, contract, or other specific matter involving MCPS, if that case, controversy, dispute, contract, or other specific matter is one in which the former employee or official significantly participated as an employee or official.
- B. No official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of the Contract. This prohibition does not apply to contracts with MCPS employees or officials who contracted in their own name.
- C. The Contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, partners, employees, agents, affiliates, or subcontractors directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, and county laws and regulations.
- D. The Contractor agrees to review and at all times abide by the Board of Education Policy BBB, *Ethics* (“Board Policy BBB”). In addition, the Contractor shall have an affirmative obligation to disclose in writing to the DMM Director any actual or potential conflicts of interest as identified in Board Policy BBB, and neither the Contractor nor any of its officers, directors, partners, employees, agents, affiliates, or subcontractors shall take any action that they know or should have reason to know would result in any MCPS official or employee violating Board Policy BBB.
- E. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- F. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 17. PUBLICATION AND PUBLICITY

The Contractor shall not, without consultation and consent by MCPS, (i) originate any report, publication, presentation, publicity, news release, or other announcement, written or oral, relating to the Contract or any results achieved pursuant to the Contract (hereinafter “Publication”); or (ii) use any names, trademarks, or logos of MCPS, except as necessary to perform the work of the Contract. To the extent that MCPS agrees to any such Publication regarding the Contract, the Contractor shall abide by the following terms:

- A. The primary purpose shall be to disseminate information about the work rather than to promote the Contractor’s accomplishments or knowledge.
- B. Such Publication shall prominently display or acknowledge MCPS support and include the following disclaimers: (i) the contents of this publication do not necessarily reflect the views or policies of MCPS; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.
- C. The Contractor shall abide by the provisions of Article 18 and any other data-sharing agreement between the Parties.

ARTICLE 18. DATA COLLECTION AND CONFIDENTIAL INFORMATION

- A. The Contractor shall comply with all federal, state, and county laws and regulations applicable to the Contract regarding data collection, privacy, and security, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, (PPRA) 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board of Education policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*.
- B. Questionnaires, survey instruments, or any other form of data collection from MCPS students, staff, parents/guardians or others pursuant to the Contract or otherwise must be reviewed and approved by the MCPS Office of Shared Accountability prior to use as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.
- C. Access to Confidential Information
 - 1. To assist the Contractor in its work under the Contract, MCPS may disclose to the Contractor, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential (hereinafter, “Confidential Information”). For purposes of the Contract, Confidential Information is any information or data labeled or identified as confidential in the Contract or at the time of disclosure. This definition and the obligations of this Article shall not extend to any information that: (i) the Contractor possesses prior to acquiring it from MCPS; (ii) becomes available to the public or trade through no violation by the Contractor; or (iii) is developed by the Contractor independently of and without reliance on confidential or proprietary information provided by MCPS.
 - 2. Confidential Information also includes any and all “Personally Identifiable Information” regarding MCPS students, parents/guardians, employees, or others in any medium, including but not limited to any user-generated content that MCPS students, parents/guardians, employees, or others (“MCPS

Users”) input to access or use the Contractor’s deliverables, products, and/or services (e.g., log-in information or responses to assessment questions), as well as “Metadata.” Metadata includes but is not limited to: information about how long a MCPS User took to perform a task; information about how long a MCPS User’s mouse hovered over an item; keystroke data; or other data about the MCPS User’s use of the Contractor’s deliverables, products, and/or services that has not been stripped of all direct and indirect identifiers. With respect to MCPS students, Personally Identifiable Information, as defined under applicable law, includes:

- a. A student’s name;
 - b. The name of the student’s parent/guardian or other family members;
 - c. The address of the student or student’s family;
 - d. A personal identifier, such as the student’s social security number, student number, or biometric record;
 - e. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
 - f. Other information (including but not limited to Metadata) that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the MCPS community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or
 - g. Information requested by a person, who is not an authorized representative of the educational agency and who MCPS and/or the Contractor reasonably believes knows the identity of the student to whom the education record relates.
3. Confidential Information shall be maintained in confidence during the Contract and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by law, regulation or judicial or administrative process. The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall protect the Confidential Information from any Data Security Breach (as defined below), loss, theft, or disclosure using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the Contractor uses to protect its own confidential information. The Contractor agrees to assist MCPS in maintaining the privacy of Confidential Information as may be required by all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
 4. The Contractor shall not permit unauthorized access to the Confidential Information to any individual or entity at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
 5. In the event that the Contractor is required by law, regulation, or judicial or administrative process to disclose any Confidential Information, the Contractor will promptly notify MCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate MCPS’ seeking of a protective order or other appropriate remedy from the appropriate body. Should the proprietary or confidential status of any such information be disputed, the Parties agree to work in good faith to reach a mutually satisfactory disposition.

6. To the extent that Confidential Information includes Personally Identifiable Information regarding MCPS Users, MCPS may require additional data sharing protocols, as agreed in writing by the Parties, prior to its disclosure to the Contractor. The Contractor also agrees to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information that includes Personally Identifiable Information to any of its employees, agents, affiliates, and subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor (i) requires such access in order to allow the Contractor to provide the deliverables, products, and/or services set forth in the Contract or to fulfill the Contractor's obligations under the Contract; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the Contract that will (a) prohibit the such individual or entity from using any Confidential Information for any purpose other than providing the contracted service to, or on behalf of the Contractor; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Contractor to third parties; (c) require the individual or entity to implement and maintain strict security procedures and practices that, at a minimum, comply with industry standards for data security; and (d) require the individual or entity to promptly notify the Contractor if the individual or entity becomes aware of any unlawful access to any Confidential Information stored on its equipment or facilities resulting in loss, disclosure, or alteration of Confidential Information.. Such non-disclosure agreements shall be made available for inspection, upon demand, to MCPS. The Contractor agrees to remind (in writing) individuals or entities who cease working with the Contractor of their non-disclosure obligations at the time of departure, and to terminate the network access of such individuals or entities at the time of separation.
7. Notwithstanding any other provision of the Contract, MCPS and/or MCPS Users, as appropriate, retain all right, title, and interest in and to the Confidential Information provided by MCPS and/or MCPS Users. Neither the Contractor, nor any successor or entity to which the Contractor's assets are sold, acquires rights in the Confidential Information, other than the rights MCPS grants to the Contractor to perform the work contemplated in the Contract. If the Contractor becomes subject to dissolution or insolvency, MCPS' and MCPS Users' Confidential Information will not be considered an asset or property of the Contractor. MCPS reserves the right to demand the prompt return of any Confidential Information at any time and for any reason whatsoever. The disclosure of Confidential Information to the Contractor shall not be construed as a grant of any right or license with respect to the information other than for the purposes set forth in the Contract.

D. Use of Confidential Information

1. The Contractor shall collect, use, and store only such Confidential Information that is necessary in connection with the Contractor's obligations under the Contract.
2. The Contractor may collect and use aggregated de-identified Confidential Information for the Contractor's lawful quality assurance and for no other purpose; provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an identifiable individual or to MCPS. Furthermore, the Contractor agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless MCPS has provided written express consent of the transfer.
3. Neither the Contractor nor any of its employees, agents, affiliates, and subcontractors shall: (i) engage in targeted advertising to MCPS Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a MCPS User, except in connection with the Contractor's performance of its obligations under the Contract; (iv) sell Confidential Information; or (v) share with any individual

or entity outside MCPS, without prior review and approval from MCPS, any report, data, or research findings that are based on Confidential Information or the use by MCPS or MCPS Users of the Contractor's deliverables, products and/or services and that could be linked to an identifiable MCPS User, stakeholder, school, or the district.

4. To the extent that the Contract requires the Contractor to provide online or mobile services to MCPS that involve the collection, maintaining, or use of Confidential Information that includes Personally Identifiable Information regarding MCPS students, the Contractor warrants that it has signed-on to the *K-12 School Service Provider Pledge to Safeguard Student Privacy* (the "Student Privacy Pledge," available at www.studentprivacypledge.org) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these MCPS General Contract Articles shall govern.
5. The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any MCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

E. Security of Confidential Information

1. The Contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but is not limited to, the following:
 - a. Security policies for the Contractor's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
 - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - c. Secure access controls to Confidential Information, including but not limited to passwords;
 - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
 - e. Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
 - f. Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal, state, and county laws and regulations;
 - g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
 - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
2. The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm

to MCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by MCPS or MCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to MCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.

3. Access to the Contractor's server(s) hosting Confidential Information shall be limited to the Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.
 4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS.
 5. The Contractor will regularly backup or cause to be backed up all Confidential Information under its control and will securely store and retain backups for such period of time as may be required by federal or state law or regulation, or by MCPS. The Contractor will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Contractor is required to restore any materials from its backups, it will purge all personally identifiable Confidential Information not currently in use in the production systems from the restored backups.
- F. MCPS reserves the right in its sole discretion to perform audits of the Contractor at its sole expense to ensure compliance with this Article. The Contractor shall reasonably cooperate in the performance of such audits. The Contractor also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Contractor uses to collect, process, maintain, or store MCPS' Confidential Information that includes Personally Identifiable Information regarding MCPS Users, and to hire a third party to conduct no less than annual security audits, which includes penetration testing. The Contractor shall review audit findings and will implement recommended security program changes and enhancements where practical and appropriate. The Contractor will provide MCPS, upon request, summary data of the above audits, scans, and tests. The Contractor will take reasonable measures, including maintaining audit trails, to protect Confidential Information against deterioration or degradation of data quality and authenticity.
- G. Data Security Breach
1. A "Data Security Breach" is any instance in which the Contractor has actual knowledge or a reasonable basis on which to suspect or conclude that there has been an unauthorized release or access of Confidential Information, regardless of whether the Contractor stores and manages data directly or through a contractor such as a third-party cloud computing vendor. A Data Security Breach may take various forms, including but not limited to: hackers gaining access to data through a malicious attack; lost, stolen, or temporarily misplaced data or equipment (e.g., mobile computing devices or portable memory devices); employee negligence (e.g., leaving a password list in a publicly-accessible location, technical staff misconfiguring a security service or device); or policy and/or system failure.

2. The Contractor shall notify the MCPS Project Contact immediately of any Data Security Breach, and inform MCPS (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Contractor learns of the Data Security Breach. If the Contractor becomes aware of a Data Security Breach, it shall cooperate with MCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Contractor shall be responsible for performing an analysis to determine the cause of the Data Security Breach, and for producing a remediation plan in consultation with MCPS. MCPS and the Contractor agree to work together to determine an appropriate notification plan to any MCPS Users of the Contractor's deliverables, products and/or services regarding any such Data Security Breach. In addition, to the extent not prohibited, the Contractor agrees to notify MCPS of Data Security Breaches that affect its customers generally.
 3. In addition to any other remedies available to MCPS, at law or in equity, the Contractor will reimburse MCPS in full for all costs incurred by MCPS in investigating and remediating any Data Security Breach caused in whole or in part by the Contractor or its employees, agents, affiliates, or subcontractors. The Contractor shall use commercially reasonable efforts to mitigate any negative consequences caused to MCPS, or to a MCPS User, as the result of a Data Security Breach and to implement procedures to prevent the recurrence of a similar Data Security Breach.
 4. The Contractor shall provide notice to MCPS within twenty-four (24) hours of notice or service on the Contractor, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Contractor's handling of Confidential Information, failure to follow security requirements, and/or failure to safeguard confidential information of any third party.
- H. Except as specifically set forth by MCPS in writing, or as required by federal, state, and county laws and regulations, the Contractor shall upon the termination or expiration of the Contract, upon cessation or dissolution of the Contractor's business operations, or upon request by MCPS:
1. Erase, destroy, permanently delete, and render unreadable all Confidential Information in its paper files, computers, computing environment, systems, equipment, servers, and physical data centers; or, upon MCPS' request to ensure the integrity of MCPS operations, transfer/migrate such Confidential Information to MCPS or its designated third party;
 2. Certify in writing that the actions set forth in this subsection have been completed on or before agreed-upon deadlines;
 3. Ensure that any transfer/migration uses facilities and methods that are compatible with the relevant systems of MCPS or its designated third party; and
 4. To the extent technologically possible, ensure that MCPS will have access to the Confidential Information during any transfer/migration.
- I. Nothing in this Article shall supersede in any manner the Contractor's obligations or the obligations of its employees, agents, affiliates, or subcontractors pursuant to all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above, or the provisions of the Contract concerning the Contractor's obligations to MCPS.
- J. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. Notwithstanding anything in the Contract to the contrary, the provisions of this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 19. DOCUMENTATION AND COPYRIGHT

- A. The Contractor warrants that any deliverables, products, and/or services provided by the Contractor to MCPS through the Contract, as delivered by the Contractor for MCPS' normal use, will not infringe any valid patents or copyrights existing at the time the deliverables, products, and/or services are made available to MCPS, provided however, that this warranty does not extend to any infringement arising out of the use of such deliverables, products, and/or services in combination with other systems, equipment, or platforms not supplied by the Contractor. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other deliverables developed as a contractual requirement are the sole property of MCPS. MCPS may waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any deliverable or product developed for MCPS purposes under the Contract and may license its use by others for a fee or without charge.
- B. The Contractor agrees that it shall not assert any ownership rights, property rights, or copyright to MCPS student work product, as defined in Md. Code Ann., Education § 4-130.

ARTICLE 20. MCPS PROPERTY

The use of MCPS property, including but not limited to equipment and technology, must be approved in advance by the DMM Director. If the DMM Director has agreed to the Contractor's use of MCPS property, the following provisions shall apply:

- A. The Contractor shall insure all MCPS property in its possession or control and shall be liable to MCPS for the fair market value of any damage or loss to MCPS property, aside from that incurred by normal wear and tear. The Contractor shall maintain the property in operating condition, with the cost being chargeable to the Contract.
- B. All MCPS property shall be returned promptly upon completion of the Contract or otherwise disposed of, as directed in writing by MCPS. All costs of shipment or disposal are a Contract cost.
- C. Unless stated otherwise in writing, MCPS property may be used only for the performance of the Contract.
- D. Title to all MCPS property shall remain in the hands of MCPS at all times. Title to the property acquired by the Contractor for use under the Contract shall vest in MCPS upon delivery to the Contractor. Title to property leased with a purchase option shall pass to MCPS even if the option date is later than the Contract period. Any payments required to acquire title are a Contract cost.

ARTICLE 21. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN MCPS FACILITIES

- A. Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to MCPS contracts:**
 - 1. Maryland Law requires that any person who enters into a contract with a county board of education "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five (5) years imprisonment and/or a \$5,000 fine.
 - 2. Maryland Law further requires that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo

contendere to, a crime involving:

- a. A sexual offense in the third or fourth degree under § 3–307 or § 3–308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3–307 or § 3–308 of the Criminal Law Article if committed in Maryland;
 - b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
 - c. A crime of violence as defined in § 14–101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14–101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.
3. The Contractor is required to submit, following award of the Contract, documentation confirming that its direct employees and those of any subcontractors and/or independent contractors assigned to perform work in a MCPS school facility under the Contract meet this obligation. Additionally, the Contractor must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in its workforce that the Contractor and/or its subcontractors use to perform the work required by the Contract.

B. Required criminal background check process for certain individuals in the Contractor’s workforce:

1. Under § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term “workforce” in this and the preceding section refers to all of the Contractor’s direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Contractor uses to perform the work required by the Contract.
2. Fingerprinting for the criminal background check may be performed by the MCPS Office of Human Resources and Development, 45 W. Gude Drive, Rockville, MD 20850, or through another service approved by MCPS. Individuals fingerprinted by MCPS will be required to provide written consent, and MCPS will maintain copies of all records for criminal background checks performed by MCPS. If the Contractor uses another service approved by MCPS, the results of the criminal background check must be provided to MCPS for record keeping. A list of MCPS approved fingerprinting agencies is available at www.montgomeryschoolsmd.org/departments/procurement.
3. The Contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to any sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as

warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the Contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the Contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the Contractor's summary to determine whether to accept the Contractor's recommendation, and the Contractor will be responsible for any consequences of a material misrepresentation in its written summary.

4. Once the Contract is awarded, the Contractor is responsible for implementing the background check process. An individual in the Contractor's workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (i) the background check results for that individual have been received by MCPS; (ii) the Contractor certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: www.montgomeryschoolsmd.org/childabuseandneglect/; and (iii) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The Contractor will be required to return all badges at the conclusion of the Contract.
 5. The criminal background check and badging process will be at the Contractor's expense.
- C. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 22. INDEMNIFICATION AND LIABILITY

- A. The Contractor is responsible for any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement. For purposes of this Article, the negligence of employees, agents, affiliates, or subcontractors of the Contractor is deemed to be the negligence of the Contractor. In addition, the Contractor must defend, indemnify, and hold MCPS harmless from and against: (i) any claim (including but not limited to an enforcement action by any federal, state, or local agency) arising from or related to any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including but not limited to attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the Contractor of work, services, materials, or supplies in connection with or in support of the performance of the Contract; and (iii) any claim of infringement or misappropriation of any patent, copyright or other intellectual property right.
- B. In the event of any intellectual property infringement or misappropriation claim, or if the Contractor becomes aware of the possibility of such a claim, the Contractor may, in its discretion, within sixty (60) days: (a) furnish MCPS with non-infringing replacement of its deliverables, products, and/or services which are functionally equivalent in all material respects to MCPS' satisfaction; (b) modify the applicable deliverables, products, and/or services so that they become non-infringing but functionally equivalent in all material respects to MCPS' satisfaction; (c) obtain for MCPS the right to use such deliverables, products, and/or services upon commercially reasonable terms, subject to adjusted payment obligations on the part of MCPS if such terms differ from those set forth in the Contract; or (d) if and only if (a) – (c) are commercially impracticable, terminate the Contract in whole or in part and

refund to MCPS the fees received for such deliverables, products, and/or services that are the subject of such a claim.

- C. In any action or proceeding brought against MCPS by reason of the foregoing, the Contractor must reimburse MCPS the cost of defending such action or proceedings, or upon MCPS' written demand and at the Contractor's sole cost and expense, the Contractor must defend such action and proceeding by counsel approved by MCPS.
- D. For the purposes of this Article, MCPS includes the Board of Education of Montgomery County, and its officers, officials, agents, and employees. Nothing herein or any other provision of the Contract shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of MCPS pursuant to Maryland law, or otherwise. In addition, nothing herein or any other provision of the Contract shall be construed to require MCPS to defend, hold harmless, indemnify, or pay any expenses (including but not limited to attorney's fees and litigation expenses) to the Contractor. The Contractor expressly understands and agrees that any performance bond or insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit its responsibility under the Contract to defend, indemnify, and hold harmless MCPS.
- E. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, THE CONTRACTOR'S DELIVERABLES, PRODUCTS, SERVICES, AND/OR OTHER ITEMS PROVIDED HEREUNDER; HOWEVER, THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE. NO OTHER DISCLAIMER OR LIMITATION OF LIABILITY SHALL BE APPLICABLE TO THE DELIVERABLES, PRODUCTS, AND/OR SERVICES, OR WORK PROVIDED BY THE CONTRACTOR UNDER THE CONTRACT.
- F. Notwithstanding anything in the Contract to the contrary, this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 23. INSURANCE

- A. The Contractor shall be solely responsible for any insurance, including, but not limited to, general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The Contractor agrees to provide MCPS with certificates of insurance verifying the following minimum coverage:
 - 1. Comprehensive General Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate. Such insurance shall include contractual liability insurance.
 - 2. Comprehensive Business Automobile Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the Contract.
 - 3. Worker's Compensation Insurance: Statutory coverage as required by federal, state, and county laws and regulations.
 - 4. Professional Liability, Errors, and Omissions Insurance: Liability limit of not less than One Million Dollars (\$1,000,000.00) in the event the deliverables, products, and/or services delivered pursuant to the Contract, either directly or indirectly, involve or require Professional Services.

- B. The minimum limits of coverage listed above shall not be construed as the maximum as required by the Contract or as a limitation of any potential liability on the part of the Contractor; nor shall failure by MCPS to request evidence of this insurance in any way be construed as a waiver of the Contractor's obligation to provide the insurance coverage specified. The Contractor must keep this insurance in full force and effect during the term of the Contract, including all extensions. If coverage is written on a claims made basis, the policy shall be endorsed to provide at least a three-year extended claims reporting provision.
- C. Insurance is to be placed with insurers licensed/approved to do business in the State of Maryland with a Best's rating of no less than A:VII, or if not rated with Best's, with a minimum surplus the equivalent of Best's surplus size VII, unless otherwise approved by the DMM Director. The Contractor's insurance coverage shall be primary. The Board of Education of Montgomery County and its officers, officials, agents, and employees shall be covered by endorsement, as additional insureds with respect to liability arising out of activities performed or to be performed by or on behalf of the Contractor in connection with the Contract. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit brought. Any insurance and/or self-insured program maintained by the Board of Education of Montgomery County or its officers, officials, agents, and employees shall not contribute to the Contractor's insurance or benefit the Contractor in any way.
- D. The Contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the Contract evidencing the coverage required above. The certificates shall confirm that the Board of Education of Montgomery County and its officers, officials, agents, and employees have been made additional insureds under the respective insurance policies. The Contractor must provide to MCPS at least thirty (30) days written notice of a cancellation of, or a material change to, an insurance policy. The Contractor must provide the certificates of insurance before commencing the work covered by the Contract.

ARTICLE 24. ORDER OF PRECEDENCE

Unless expressly agreed in writing by the Superintendent of Schools, these MCPS General Contract Articles shall take precedence over, supersede, and void any other provision of the Contract to the extent such other provision is contrary to or inconsistent with the MCPS General Contract Articles. For avoidance of doubt, to the extent that any provision of the Contract provides MCPS with additional or greater rights than those provided in the MCPS General Contract Articles, or any other provision of the Contract imposes requirements on the Contractor in addition to those set out in the MCPS General Contract Articles, such other provision shall be deemed to be supplemental to, and not contrary to or inconsistent with, the MCPS General Contract Articles.

ARTICLE 25. SEVERABILITY

Should any portion of the Contract be found illegal, the remainder shall remain in full force and effect and shall be binding on both Parties.

ARTICLE 26. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of Maryland, without regard to conflicts of law provisions. Sole and exclusive jurisdiction for any action or proceedings arising out of or related to the Contract shall be in an appropriate state or federal court located in Maryland.

ARTICLE 27. ENTIRE CONTRACT

The Contract is binding between the Parties and constitutes the entire understanding between the Parties regarding the subject matter of the Contract and supersedes all prior or contemporaneous statements,

understandings and contracts, whether oral or written, between the Parties with respect to the subject matter of the Contract. Any changes and additions hereto shall not become binding upon any Party unless they are incorporated into a written contract amendment signed by the Parties.

ARTICLE 28. SUCCESSORS AND ASSIGNS

The Contract and all of its provisions shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of the Contract or any part hereof, rights hereunder, or interest herein by the Contractor shall be valid unless and until it is approved in writing by MCPS and made subject to such reasonable terms and conditions as MCPS may impose. Unless performance is expressly waived in writing by the DMM Director, an assignment does not release the Contractor from responsibility for performance of the Contract.

ARTICLE 29. GUARANTEE

- A. The Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the RFP or solicitation, all deliverables, products, and/or services, including those used in the course of providing the deliverables, products, and/or services. This includes a guarantee that all such deliverables, products, and/or services 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 RFP or 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 MCPS and to MCPS' 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 MCPS of the deliverables, products, and/or services.
- D. Deliverables, products, and/or services provided under the 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 MCPS.

Revised September 1, 2017

RFP 1140.4 EXHIBIT II

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

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

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

2. AMERICANS WITH DISABILITIES ACT

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

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The County's prevailing wage law, as found at §11B-33C of the County Code, applies to certain construction 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;

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- (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.

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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)

Up to 50	Up to 100	Up to 1,000	Over 1,000
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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
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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
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Certificate Holder
 Montgomery County Maryland (Contract #)
 Office of Procurement
 255 Rockville Pike, Suite 180
 Rockville, Maryland 20850 4166

*Professional services contracts only

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

	<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
255 Rockville Pike, Suite 180
Rockville, Maryland 20850 4166

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22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

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

23. INFORMATION SECURITY

A. Protection of Personal Information by Government Agencies:

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

B. Payment Card Industry Compliance:

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

24. NON-CONVICTION OF BRIBERY

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

25. NON-DISCRIMINATION IN EMPLOYMENT

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

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

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

26. PAYMENT AUTHORITY

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. 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.

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

III. PERMISSIBLE USE AND DISCLOSURE OF PHI

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. TERM AND TERMINATION.

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

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

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

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

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

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

C. Effect of Termination.

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

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

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

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

VI. CAUSES OF ACTION IN THE EVENT OF BREACH. As used in this paragraph, the term “breach” has the meaning normally ascribed to that term under the Maryland law related to contracts, as opposed to the specific definition under HIPAA related to PHI. Business Associate hereby recognizes that irreparable harm will result to Covered Entity in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of this Agreement. Furthermore, in the event of breach of this Agreement by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The causes of action contained in this Article VI are in addition to (and do not supersede) any action for damages and/or any other cause of action Covered Entity may have for breach of any part of this Agreement. Furthermore, these provisions are in addition to the provisions set forth in Paragraph 18, “Indemnification”, of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which “Business Associate” is “Contractor” and “Covered Entity” is “County”, for purposes of this Agreement.

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

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

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

X. MISCELLANEOUS.

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

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

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

Joy Page, Esq.
Deputy Privacy Official
Montgomery County, Maryland
401 Hungerford Drive, 7th Floor
Rockville, Maryland 20850
(240) 777-3247 (Voice)
(240) 777- 3099 (Fax)

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

Address: _____

Attention: _____
Phone: _____

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

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

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

SIGNATURE PAGE FOLLOWS

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

(INSERT NAME OF BUSINESS ASSOCIATE)

MONTGOMERY COUNTY, MARYLAND

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

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: _____

MONTGOMERY COUNTY, MARYLAND
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN

Contractor's

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

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

Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

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

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

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

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

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

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

2. Certified by: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____
CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
FEMALE HISPANIC AMERICAN NATIVE AMERICAN

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

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

3. Certified by: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____
CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
FEMALE HISPANIC AMERICAN NATIVE AMERICAN

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

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

4. Certified By: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

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

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

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

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

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

Full Waiver Approved:

Partial Waiver Approved:

MFD Program Officer

Date: _____

MFD Program Officer

Date: _____

Full Waiver Approved:

Partial Waiver Approved:

Director
Cherri Branson
Office of Procurement

Date: _____

Director
Cherri Branson
Office of Procurement

Date: _____

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

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

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

Signature

Typed Name

Title

Date

APPROVED:

Cherri Branson, Director, Office of Procurement

Date

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

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.

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.

EXHIBIT VII

M-NCPPC

Post-Employment Medical Benefits Actuarial Valuation

As of July 1, 2017

**The Maryland-National Capital
Park & Planning Commission
Post-Employment Medical Benefits
Actuarial Valuation as of July 1, 2017
to Determine the Commission's Contribution
for the Fiscal Year Ending June 30, 2018
-Revised-**



Fiscal Year: July 1, 2017 – June 30, 2018

Date of Report: January 11, 2018

Prepared By: Bolton Partners, Inc.
36 S. Charles Street
Suite 1000
Baltimore, MD 21201



January 11, 2018

Ms. Barbara Walsh
Maryland-National Capital Park and Planning Commission
6611 Kenilworth Ave.
Riverdale, MD 20737

Dear Barbara:

The following sets forth the calculation of the Actuarially Determined Contribution for the Maryland-National Capital Park and Planning Commission (M-NCPPC) as of July 1, 2017. Section 1 of the report provides an executive summary while Sections 2 through 6 contain the development of M-NCPPC's contribution for the 2018 fiscal year along with a summary of the census and asset data, plan provisions, assumptions and actuarial methods. Section 7 provides a glossary of many of the terms used in this report. This report has been revised to reflect updated budget forecasting.

This report has been prepared for the Maryland-National Capital Park and Planning Commission for the purpose of computing the Actuarially Determined Contribution for FYE 2018. It is neither intended nor necessarily suitable for other purposes. Bolton Partners is not responsible for the consequences of any other use or the reliance upon this report by any other party.

As requested by M-NCPPC, we are also including a 5-year budget forecast that projects the actuarially determined contribution (ADC) and calculates the estimated contribution requirement for M-NCPPC.

In general post-employment medical valuations are based on an assumption for post-employment medical increases. If medical costs increase at a rate greater than our assumption there could be a dramatic increase in the cost. The report shows the impact of a 1 percent (over all years) increase in the medical trend assumption.

Bolton Partners, Inc.

36 S Charles St. • Suite 1000 • Baltimore, Maryland 21201 • (410) 547-0500 • (800) 394-0263 • Fax (410) 685-1924
Employee Benefits and Investment Consulting

Ms. Barbara Walsh
January 11, 2018
Page Two

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: retiree experience differing from that anticipated by the assumptions; changes in assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period); and changes in plan provisions or applicable law.

The report is based on data submitted by M-NCPPC and medical claims reported by the carriers. We reviewed the data for reasonableness but we did not perform an audit of the data. We relied on this information for purposes of preparing this report. For demographic assumptions (retirement, termination, disability), we relied upon the assumptions used by the previous actuary.

The actuarial methods and assumptions used in this report comply with GASB Standards and the actuarial standards of practice promulgated by the Actuarial Standards Board.

Bolton Partners is completely independent of Maryland-National Capital Park and Planning Commission, its programs, activities, officers and key personnel. Bolton Partners, and anyone closely associated with us, does not have any relationship which would impair or appear to impair our independence on this assignment.

Kevin is a Member of the American Academy of Actuaries and meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report.

Respectfully submitted,



Kevin Binder, F.S.A.,M.A.A.A
Actuary
(443) 573-3906
kbinder@boltonpartners.com



Kari Szabo C.E.B.S.
Consultant
(443) 573-3919
kszabo@boltonpartners.com

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1. Executive Summary

Background

Bolton Partners, Inc. has prepared the following report that sets forth the FYE 2018 Actuarially Determined Contribution (ADC) for M-NCPPC Employees. The prior report prepared under the GASB45 accounting standard for FYE 2017 accounting purposes was provided by the previous actuary Boomershine Consulting Group, LLC. Starting in FYE 2018 the GASB45 accounting standard will be replaced by the GASB75 accounting standard. GASB75 accounting results cannot be prepared prior to the measurement date which must be between the last day of the prior fiscal year (June 30, 2017) and the last day of the current fiscal year (June 30, 2018). Accordingly, the accounting results cannot be provided at this time.

This report has been prepared for budgeting. Under GASB45, an Actuarial Required Contribution (ARC) was determined. M-NCPPC's contribution policy has been to contribute the ARC to the OPEB trust. GASB75 has separated funding and accounting and thus there is no longer an ARC. GASB75 does have a concept of an Actuarially Determined Contribution (ADC) that ensures plan solvency and is a disclosure item. M-NCPPC has decided to determine the ADC using the same method and assumptions used to determine the GASB45 ARC.

OPEB Trust Arrangement and Funding Policy

M-NCPPC established an irrevocable Trust for its OPEB plan. The market value of the assets in Trust as of June 30, 2017 is \$61,342,780 as reported by M-NCPPC. Pay-go benefits are paid from general revenue. M-NCPPC's contribution policy is to contribute the ADC minus expected pay-go and minus federal reimbursements annually to the trust.

Implications of the Sponsor's Funding Policy

We anticipate the Plan's funded status will gradually improve as M-NCPPC continues to contribute the ADC to its OPEB Trust annually. We anticipate the expected benefit payments will increase 92% over the next ten years (please refer to Appendix 2 for the expected benefit payment stream). This means the M-NCPPC's contribution to the Plan will increase at a rate slightly higher than the rate of payroll increase.

Significant assumptions used in the assessment are: no future changes to plan provisions, assumptions or methods; no significant demographic changes in the future; investment returns and claims experience are consistent with the assumptions.

1. Executive Summary (cont.)

Implications of the Sponsor's Funding Policy (cont.)

The funded status shown in this report is not appropriate for assessing the sufficiency of plan assets to cover the estimated cost of settling the plan's benefit obligations.

The funded status is appropriate for assessing the need for or the amount of future actuarially determined contributions.

Actuarially Determined Contribution and Contribution Requirement

The actuarially determined contribution (ADC) increased from the previous valuation. The prior actuary calculated an estimated ADC of \$20,566,000 for FYE 2018. This amount has increased to \$22,162,000. The employer contribution has also increased from \$5,126,000 as calculated by the prior actuary to \$8,058,000. The increase is mainly due to updating the trend assumption and amending the accounting for Federal Subsidies.

Below is a chart reconciling the changes in the FYE 2018 ADC and Employer Contribution from the prior actuary to this year.

<i>Comparison of Current and Previous Valuations</i>		
<i>Data as of</i>	<i>07/01/2016</i>	<i>07/01/2017</i>
Demographic Data		
Employees with Medical Coverage	1,808	1,822
Retirees	1,024	1,061
Reconciliation	ADC	Contribution
FYE 2017 (Previous Valuation Projection)	\$20,566,000	\$5,126,000
Increase/(Decrease) due to Asset Experience	(\$292,000)	(\$292,000)
Increase/(Decrease) due to Change in Federal Subsidy	\$0	\$373,000
Increase/(Decrease) due to Change in Employer Pay-Go Cost	\$0	\$963,000
Increase/(Decrease) due to Demographic and Claims Experience	(\$34,000)	(\$34,000)
Increase/(Decrease) due to Change in Trend	\$2,132,000	\$2,132,000
Increase/(Decrease) due to Change in Plan	(\$344,000)	(\$344,000)
Increase/(Decrease) due to Lowering Discount Rate from 7.00% to 6.95%	\$134,000	\$134,000
FYE 2017	\$22,162,000	\$8,058,000

1. Executive Summary (cont.)

Plan Provisions

Retirees and beneficiaries of the Maryland-National Capital Park & Planning Commission (M-NCPPC) who had health, prescription, dental, and/or vision coverage as active employees are eligible for coverage if they retire from active service after:

- Attaining eligibility to retire directly from active service and are receiving retirement benefits from retirement programs sponsored by M-NCPPC, including the M-NCPPC Employees' Retirement System (ERS)
- Having maintained coverage continuously for the 36-month period immediately prior to retirement with the Commission's Plan or another employer plan

The subsidy for employees depends on job category, date of hire, and health coverage. Please see Section 5 for more details.

Demographic Data

Demographic data as of July 1, 2017 was provided to us by M-NCPPC. This data included current medical coverage for current employees and retirees.

Although we have not audited this data we have no reason to believe that it is inaccurate.

Claims Data

The gross claims are based on enrollment and paid medical claims and prescription for pre and post age 65 retirees paid from July 1, 2016 to June 30, 2017. Claims and enrollments were divided into Medicare and non Medicare eligible retirees.

The published insurance rates for persons prior to Medicare eligibility are based primarily on the healthcare usage of active employees. Since retirees' per capita health cost is much higher than that for employees, using these blended rates creates an implicit subsidy for the retiree group. GASB requires that the claims assumption we use for this valuation be based on the actual per-capita retiree cost.

Although we have not audited the claims data we have no reason to believe that it is inaccurate.

1. Executive Summary (cont.)

Impact of Health Care Reform

The Cadillac Tax is one of the provisions of the Affordable Care Act (ACA) of 2010 and is effective in 2020. The Cadillac Tax only applies to plans that cost \$10,200 or more for an individual or \$27,500 per family. There will be a 40 percent excise tax for expenditures over these thresholds. The thresholds are set to grow by the consumer price index (CPI) plus 1 percentage point in 2019 and 2020, and by the CPI thereafter.

Because medical trends are projected to be higher than general inflation we expect the percentage of the premium that is subject to the premium tax will increase over time. M-NCPPC's OPEB plan is generous. General Employees with 25 or more years of service receive a 75 percent (or greater) employer subsidy while Police employees with 25 or more years of service receive a 78 percent (or greater) employer subsidy depending on date of hire and service at retirement. Hence, we expect the M-NCPPC to be affected by the Cadillac Tax at some point in the future.

At the direction of the plan sponsor, we are not reflecting the Cadillac Tax for budgeting purposes. There are no requirements to prefund, and the Cadillac tax is far in the future and uncertain, accordingly the Plan Sponsor has elected not to divert additional resources to be able to pay a tax that may never be levied on the Plan.

Implicit Subsidy

The published insurance rates for persons prior to Medicare eligibility are based primarily on the healthcare usage of active employees. Since retirees use healthcare at a rate much higher than employees, using these blended rates creates an implicit subsidy for the retiree group. GASB requires that the claims assumption we use for this valuation be based on the actual per-capita retiree cost. The difference between the actual usage of healthcare by retirees and the assumption built into the published rates is identified as the implicit subsidy amount. The impact on rates can be seen in Section 6. The liabilities could be reduced by publishing rates for retirees prior to Medicare eligibility that more closely reflect the true cost of healthcare for each group.

1. Executive Summary (cont.)

Demographic Assumptions

Demographic assumptions (retirement, termination, disability, mortality) mirror the assumptions used for the previous valuation and are based on an experience study performed by the prior actuary.

Please see Section 6 for more details.

Economic Assumptions

The discount rate of 6.95% was selected by M-NCPPC.

The medical trend assumption was developed using the Society of Actuaries (SOA) Long-Run Medical Cost Trend Model baseline assumptions. The SOA Model was released in October 2010 and updated in August 2017. The following assumptions were used as input variables into this model. These input assumptions were selected to closely align the M-NCPPC OPEB trend assumption with that used by Montgomery County, and our all well within the acceptable range of economic assumptions allowed by the model:

Rate of Inflation	2.2%
Rate of Growth in Real Income / GDP per capita	1.0%
Extra Trend due to Technology and other factors	1.2%
Health Share of GDP Resistance Point	25.0%
Year for Limiting Cost Growth to GDP Growth	2075

The SOA Long-Run Medical Cost Trend Model is based on an econometric analysis of historical U.S. medical expenditures and the judgments of experts in the field. The long-run baseline projection, tolerance ranges and input variables have been developed under the guidance of an SOA Project Oversight Group.

Future medical care cost increase rates are unpredictable and could be volatile. They will depend upon the economy, future health care delivery systems and emerging technologies. The trend rate selected is based on an economic model developed by a health care economist for the Society of Actuaries. Future medical trend increases could vary significantly from the model. Model inputs will be updated periodically based on the best estimate of the economy at that time. Small changes in the model inputs can results in actuarial losses or gains of 5 to 15 percent of liabilities.

Payroll is assumed to increase at 2.50 percent per annum. This assumption is used to determine the level percentage of payroll amortization factor.

2. Actuarially Determined Contribution

Actuarially Determined Contribution for FYE 2018

Below is a summary of the calculation of the Plan's Actuarially Determined Contribution (ADC).

Item (6) shows the impact of a 1% increase in trend.

	FYE 2018 07/01/2017
1) Discount Rate	6.95%
2) Actuarial Accrued Liability	
a. Actives	\$163,096,000
b. Deferred Vested Terminations	\$0
c. Retirees in Pay Status	<u>\$157,017,000</u>
d. Total (a + b + c)	\$320,113,000
3) Assets	\$61,342,780
4) Unfunded Accrued Liability (2 – 3)	\$258,770,220
5) Actuarially Determined Contribution (ADC) – as of Beginning of Fiscal Year	
a. Normal Cost	\$6,659,000
b. Amortization of Unfunded Accrued Liability	<u>\$15,503,000</u>
c. Total ADC (a + b)	<u>\$22,162,000</u>
6) 1% Sensitivity ADC	\$27,046,000
7) Expected Employer Contributions	
a. Implicit Subsidy	\$1,270,000
b. Federal Subsidy	\$1,396,000
c. Net Explicit Subsidy	\$11,438,000
d. Additional Employer Contribution	<u>\$8,058,000</u>
e. Total Expected Contribution (a + b + c + d)	<u>\$22,162,000</u>

3. Plan Projections

Projection of ADC for 5 years

Below is a summary of the Plan's projected ADC for 5 years. The projection assumes M-NCPPC contributes the ADC to the trust each year.

	07/01/2017	07/01/2018	07/01/2019	07/01/2020	07/01/2021	07/01/2022
	-	-	-	-	-	-
	06/30/2018	06/30/2019	06/30/2020	06/30/2021	06/30/2022	06/30/2023
Assumptions:						
Trust Investment Return	6.95%	6.95%	6.95%	6.95%	6.95%	6.95%
Discount Rate	6.95%	6.95%	6.95%	6.95%	6.95%	6.95%
Salary Scale	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%
Normal Cost Increase	6.50%	6.50%	6.50%	6.50%	6.50%	6.50%
ERI Remaining Amortization	8	7	6	5	4	3
# Years to Amortize	29	28	27	26	25	24
Unfunded Accrued Liability:						
APBO BOY	320,113,000	336,333,000	352,818,000	369,728,000	387,097,000	405,021,000
Assets BOY	61,342,780	73,943,780	86,978,780	100,636,780	114,980,780	130,143,780
Unfunded APBO	258,770,220	262,389,220	265,839,220	269,091,220	272,116,220	274,877,220
Percent Funded	19%	22%	25%	27%	30%	32%
BOY ADC (Actuarially Determined Contribution):						
Normal Cost	6,659,000	7,092,000	7,553,000	8,044,000	8,567,000	9,124,000
Amortization	15,503,000	16,015,000	16,550,000	17,108,000	17,693,000	18,305,000
Total (ADC)	22,162,000	23,107,000	24,103,000	25,152,000	26,260,000	27,429,000
Expected Employer Contributions:						
Implicit Subsidy	1,270,000	1,451,000	1,560,000	1,664,000	1,733,000	1,769,000
Federal Subsidies	1,396,000	1,487,000	1,584,000	1,687,000	1,797,000	1,914,000
Net Explicit Subsidy	11,438,000	12,538,000	13,602,000	14,698,000	15,799,000	16,898,000
Additional Contribution	8,058,000	7,631,000	7,357,000	7,103,000	6,931,000	6,848,000
Total Contribution	22,162,000	23,107,000	24,103,000	25,152,000	26,260,000	27,429,000
Trust Assets:						
Beginning of Year Amount	61,342,780	73,943,780	86,978,780	100,636,780	114,980,780	130,143,780
Return on Investments	4,263,000	5,139,000	6,045,000	6,994,000	7,991,000	9,045,000
Mid-Year Contributions	8,058,000	7,631,000	7,357,000	7,103,000	6,931,000	6,848,000
Benefit Payments with Interest	280,000	265,000	256,000	247,000	241,000	238,000
End of Year Amount	73,943,780	86,978,780	100,636,780	114,980,780	130,143,780	146,274,780
Benefit Payments	12,708,000	13,989,000	15,162,000	16,362,000	17,532,000	18,667,000
Benefit Payment as percent of expense	57%	61%	63%	65%	67%	68%

4. Summary of Principal Plan Provisions

General Eligibility Rules

Retirees and beneficiaries of the Maryland-National Capital Park & Planning Commission (M-NCPPC) who had health, prescription, dental, and/or vision coverage as active employees are eligible for coverage if they retire from active service after:

- Attaining eligibility to retire directly from active service and are receiving retirement benefits from retirement programs sponsored by M-NCPPC, including the M-NCPPC Employees' Retirement System (ERS)
- Having maintained coverage continuously for the 36 month period immediately prior to retirement with the Commission's Plan or another employer plan

Retirement Eligibility

The retirement eligibility requirements of M-NCPPC depend upon job category and date of hire as summarized below:

Plan B (General Employees hired before 01/01/2013)

- Age 60 with 5 years of service
- 30 years of service
- Age 55 with 15 years of service (early retirement)
- 25 years of service (early retirement)

Plan C (Police Employees)

- Age 55 with 5 years of service
- 25 years of service
- 20 years of service (early retirement)

Plan E (General Employees on or after 01/01/2013)

- Age 62 with 10 years of service
- 30 years of service
- Age 57 with 15 years of service (early retirement)
- 25 years of service (early retirement)

Disability

No disability retirement benefit is provided.

4. Summary of Principal Plan Provisions (cont.)

Death

Members who meet the eligibility requirements for normal or early retirement at time of death are eligible for lifetime coverage for their surviving spouse. Spouses may continue coverage in an M-NCPPC retiree healthcare plan and receive the same subsidy as the member. Benefits end if the survivor remarries.

Members who do not meet the eligibility requirements for normal or early retirement at time of death receive:

- 6 months of medical and prescription coverage under the plan at no cost to the survivor or dependents. M-NCPPC will pay 100% of the medical and prescription premium cost of benefits already elected. Survivors are required to pay the applicable premium co-pay for vision and dental coverage if previously enrolled in those plans
- 18 months of coverage paid at the same premium sharing percentage with M-NCPPC as active employees
- 12 months of COBRA coverage at the normal federally allowed percentage

Dependents

Dependents that are not eligible for coverage at the time of retirement cannot be added at a later date.

Coordination with Medicare

All Medicare eligible retirees, surviving spouses, disability recipients, and all eligible dependents are required to enroll in Medicare Parts A and B in order to continue to be eligible for insurance coverage under the plan. The amount payable under the M-NCPPC health plan will be reduced by the amount payable under Medicare for those expenses that are covered by both.

Medicare eligible participants are required to choose between enrolling in the Federal Part D prescription drug plan and the M-NCPPC plan. Participants enrolled in both will be required to dis-enroll from the M-NCPPC plan.

4. Summary of Principal Plan Provisions (cont.)

Employer Subsidy

The subsidy for employees depends on job category, date of hire, and health coverage as follows:

- General Employees hired before 01/01/2013 receive an 80% subsidy from M-NCPPC
- Police Employees hired before 01/01/2014 receive a 78% subsidy from M-NCPPC
- General Employees hired on or after 01/01/2013 and Police Employees hired on or after 01/01/2014 receive a subsidy based on years of service as follows:

<i>Coverage</i>	<i>General Employees</i>	<i>Police Employees</i>
10	50.00%	50.00%
11	51.50%	52.33%
12	53.00%	54.67%
13	54.50%	57.00%
14	56.00%	59.33%
15	57.50%	61.67%
16	59.00%	64.00%
17	60.50%	66.33%
18	62.00%	68.67%
19	63.50%	71.00%
20	65.00%	73.33%
21	66.50%	75.67%
22	68.00%	78.00%
23	69.50%	78.00%
24	72.00%	78.00%
25 or more	75.00%	78.00%

4. Summary of Principal Plan Provisions (cont.)

Employer Subsidy (cont.)

- All participants receive an 80% employer subsidy for dental and M-NCPPC subsidizes 80% of the premium rate for the lowest cost vision plan

Underlying Plan Description

M-NCPPC offers 3 medical plans for pre-medicare retirees, a Kaiser HMO, UHC POS, and UHC EPO. Medicare eligible retirees can choose between 2 plans, the UHC Choice Plus POS plan and the Kaiser HMO plan. A summary of the premium rates for retirees is provided below:

Plan	Monthly Premium Rates		
	<u>Single</u>	<u>Two Person</u>	<u>Family</u>
<u>Pre-Medicare Medical Plans</u>			
Kaiser HMO (with Rx)	\$503.93	\$1,007.85	\$1,511.78
UHC Choice Plus POS	\$566.00	\$1,132.00	\$1,698.00
UHC Select EPO	\$442.00	\$884.00	\$1,326.00
<u>Medicare Plans</u>			
Kaiser HMO (with Rx)	\$300.30	\$600.60	\$900.90
UHC Choice Plus POS	\$278.00	\$556.00	\$834.00
Caremark Prescription	\$202.00	\$404.00	\$606.00
United Concordia Dental	\$37.67	\$75.33	\$113.00
Vision Service Plan - Low	\$3.90	\$7.83	\$11.73
Vision Service Plan - Medium	\$6.94	\$13.89	\$20.84
Vision Service Plan – High	\$10.13	\$20.27	\$30.41

Changes in Plan Provisions since Prior Valuation

The employer medical subsidy for police participants hired before 01/01/2014 was decreased from 80% to 78% effective 01/01/2017.

The employer medical subsidy for general employees hired on or after 01/01/2013 and police employees hired on or after 01/01/2014 was changed to a subsidy based on years of service.

5. Valuation Data

Counts

The following table summarizes the counts, ages, and coverage as of 07/01/2017, for those currently enrolled in Medical/Drug coverage.

07/01/2017 – Enrolled in Medical/Drug Coverage

	Total
(1) Number of Participants	
(a) Employees	1,822
(b) Retirees (Pre-Medicare)	313
(c) Retirees (Post-Medicare)	748
(2) Employee Statistics	
(a) Average Age	47.38
(b) Average Service	14.22
(3) Retiree Statistics	
(a) Average Age (Pre-Medicare)	59.26
(b) Average Age (Post-Medicare)	73.69

Retiree Statistics and Age Distribution

The table below shows the distribution based on age for retirees with medical coverage.

Age	Medical/Drug Individual	Medical/Drug Spousal	Medical/Drug Total
Less Than 50	4	1	5
50 – 54	12	35	47
55 – 59	25	58	83
60 – 64	68	110	178
65 – 69	134	123	257
70 – 74	95	119	214
75 - 79	71	57	128
80 – 84	44	30	74
85 and above	51	24	75
Total	504	557	1,061

5. Valuation Data (cont.)

Employee Age - Service Distribution

Shown below is a distribution, based on age and service of active participants who are currently receiving medical and drug benefits from M-NCPPC.

Age	Years of Service as of 07/01/2017									Total
	Under 1	01-04	05-09	10-14	15-19	20-24	25-29	30-34	35+	
Under 25	4	10	6	0	0	0	0	0	0	20
25 - 29	10	61	22	14	0	0	0	0	0	107
30 - 34	11	73	42	43	22	0	0	0	0	191
35 - 39	11	50	36	41	43	7	0	0	0	188
40 - 44	2	47	37	49	43	28	5	0	0	211
45 - 49	7	39	35	46	55	38	17	6	0	243
50 - 54	5	27	31	50	64	36	44	35	2	294
55 - 59	3	18	34	45	39	37	54	45	8	283
60 - 64	0	12	28	25	33	26	36	28	20	208
65 - 69	0	2	6	9	14	10	9	6	7	63
70+	0	0	1	0	4	2	3	2	2	14
Totals	53	339	278	322	317	184	168	122	39	1,822

The following table shows averages in total for the above participants.

Averages	
Age:	47.38
Service:	14.22

6. Valuation Methods and Assumptions

Cost Method

This valuation uses the level percentage of payroll entry age normal cost method to value the Plan's liabilities and normal cost.

Amortization

The additional liability attributable to the Early Retirement Incentive (ERI) offered in 2010 is amortized over a 15-year closed period as level-percentage of pay. As of 07/01/2017, there are 8 years remaining. All future Early Retirement Incentives offered will be amortized over 5 years.

The Non-ERI unfunded liability is amortized as level percentage of payroll. The amortization period is closed and equals 30 years as of July 1, 2016.

Election Percentage and Age of Spouse

100% of eligible participants are assumed to elect to participate in the plan.

70% of active participants are assumed to be married and elect spousal coverage upon decrement. Actual coverage status is used for retirees. Females are assumed to be 3 years younger than their male spouse.

Salary Scale

Salaries are assumed to increase for individuals by 2.50% per year due to inflation.

Interest Assumptions

6.95% per annum effective for FYE 2017

6. Valuation Methods and Assumptions (cont.)

Trend Assumptions

The following increases are assumed for the total plan cost:

<u>Year</u>	<u>Rate</u>
2017	5.60%
2018	5.50%
2019	5.40%
2020	5.30%
2021	5.20%
2022	5.10%
2023	5.00%
2024	4.80%
2025	4.70%
2026	4.60%
2027 - 2045	4.50%
2046 - 2047	4.30%
2048 - 2051	4.20%
2052 - 2056	4.10%
2057 - 2063	4.00%
2064 - 2065	3.90%
2066 - 2067	3.80%
2068	3.70%
2069 - 2070	3.60%
2071	3.50%
2072 - 2073	3.40%
2074	3.30%
2075 +	3.20%

Dental/Vision costs are assumed to increase at 4.00% per annum.

6. Valuation Methods and Assumptions (cont.)

Decrement Assumptions

Below is a summary of decrements used in this valuation.

Mortality Decrements	Description
(1) Healthy – Pre-Retirement	RP-2000 fully generational mortality table projected using scale BB, set forward 1 year for males and 2 years for females
(2) Healthy – Post Retirement	RP-2000 fully generational mortality table projected using scale BB, set forward 1 year for males and 2 years for females
(3) Disabled	RP-2000 fully generational disabled mortality table projected using scale BB, set forward 1 year for males and 2 years for females

Disability

Sample disability rates are shown below:

Age	Police	General*
25	0.256%	0.094%
30	0.366%	0.147%
35	0.508%	0.219%
40	0.693%	0.329%
45	0.940%	0.511%
50	1.354%	0.838%
55	2.288%	1.000%
60	3.434%	2.107%

*A 75% factor was applied for males and a 56.3% factor was applied for females

Retirement

Police Employees Retirement Rates are shown below:

Years of Service	Police
5 – 19	5.00%
20 – 29	10.00%
30 +	100.00%

100% retirement is assumed at age 65. Age 55 is the minimum age for early retirement

6. Valuation Methods and Assumptions (cont.)

Decrement Assumptions (cont.)

Retirement

General Employees Retirement Rates are shown below:

Age	General
45	2.50%
50	4.00%
55	6.50%
60	10.40%
65	16.80%
70	100.00%

100% retirement is assumed at age 70. Age 55 is the minimum age for early retirement

Termination

Withdrawal Rates are shown below:

Years of Service	Police	Years of Service	General Male	General Female
0	11.00%	0	9.00%	11.70%
2	7.00%	5	4.70%	6.20%
4	4.50%	10	2.50%	3.30%
6	2.90%	15	1.30%	1.70%
8	1.80%	20	0.70%	0.90%
10	1.20%	25+	0.00%	0.00%
15+	0.00%			

6. Valuation Methods and Assumptions (cont.)

Claims Assumptions

To determine the assumed cost and the retiree contributions, we weighted the FYE 2017 premium rates by the current enrollment.

Gross claims were projected to FYE 2017 by 6.00% per annum for pre-65 medical and prescription drug expenses and 6.00% for post 65 medical and prescription drug expenses. These amounts were age adjusted. There was no adjustment made to account for EGWP reimbursements.

Dependent coverage is assumed to be 2.41 times the cost of individual coverage Pre-Medicare and 2.00 times the cost of individual coverage Post-Medicare.

The following Charts show Explicit Costs (based on published rates) and combined Total Medical and Drug Costs by age and tier.

Calendar Year 2017 Claims		
Total Costs	Medical	Drug
1. Assumed Medical and Drug Costs		
a. Pre-Medicare	\$ 6,237	\$ 2,424
b. Post-Medicare	\$ 3,687	\$ 2,424
2. Total Medical and Drug Costs		
a. Under 50	\$ 5,085	\$ 1,819
b. Age 50-54	\$ 6,196	\$ 2,319
c. Age 55-59	\$ 7,264	\$ 2,747
d. Age 60-64	\$ 8,760	\$ 3,139
e. Age 65-69	\$ 1,755	\$ 3,567
f. Age 70-74	\$ 2,216	\$ 4,031
g. Age 75-79	\$ 2,589	\$ 3,782
h. Age 80-84	\$ 3,027	\$ 3,639
i. Age 85 and over	\$ 3,269	\$ 3,211
3. Dental/Vision (based on actual cost)		
a. Explicit and Total Costs	\$ 587	\$ 587

6. Valuation Methods and Assumptions (cont.)

Other Assumptions

All participants are assumed to elect the Vision Service Low Plan for purposes of this valuation.

All active participants in the FOP bargaining group were assumed to participate in Plan C.

All general participants hired before 01/01/2013 were assumed to participate in Plan B. Those hired on or after 01/01/2013 were assumed to participate in Plan E.

All decrements were assumed to occur in the middle of the year.

Changes in Methods and Assumptions since Prior Valuation

The trend assumptions were updated to the most recent table released by the Society of Actuaries assuming a rate of inflation of 2.2%, a rate of growth in real income of 1.0%, and excess medical spending above economic growth of 1.2%.

The discount rate was lowered from 7.00% to 6.95%.

The claims assumption was updated to include the most recent plan experience.

7. Glossary

Actuarially Determined Contribution (ADC):	A target or recommended contribution to a defined benefit OPEB plan for the reporting period, determined in conformity with Actuarial Standards of Practice based on the most recent measurement available when the contribution for the reporting period was adopted.
Annual Required Contributions of the Employer(s) (ARC):	The employer's periodic required contributions to a defined benefit OPEB plan, calculated in accordance with the parameters under GASB45 accounting.
Covered Group:	Plan members included in an actuarial valuation.
Decrement:	Assumptions used to determine the probability of key change-in-status events (e.g., turnover, date of retirement, death).
Defined Benefit OPEB Plan:	An OPEB plan having terms that specify the amount of benefits to be provided at or after separation from employment. The benefits may be specified in dollars (for example, a flat dollar payment or an amount based on one or more factors such as age, years of service, and compensation), or as a type or level of coverage (for example, prescription drugs or a percentage of healthcare insurance premiums).
Employer's Contributions:	Contributions made in relation to the annual required contributions of the employer (ARC). An employer has made a contribution in relation to the ARC if the employer has (a) made payments of benefits directly to or on behalf of a retiree or beneficiary, (b) made premium payments to an insurer, or (c) irrevocably transferred assets to a trust, or an equivalent arrangement, in which plan assets are dedicated to providing benefits to retirees and their beneficiaries in accordance with the terms of the plan and are legally protected from creditors of the employer(s) or plan administrator.
Funded Ratio:	The actuarial value of assets expressed as a percentage of the actuarial accrued liability.
Healthcare Cost Trend Rate:	The rate of change in per capita health claim costs over time as a result of factors such as medical inflation, utilization of healthcare services, plan design, and technological developments.
Investment Return Assumption (Discount Rate):	The rate used to adjust a series of future payments to reflect the time value of money.

7. Glossary (cont.)

Level Percentage of Projected Payroll Amortization Method:

Amortization payments are calculated so that they are a constant percentage of the projected payroll of active plan members over a given number of years. The dollar amount of the payments generally will increase over time as payroll increases due to inflation; in dollars adjusted for inflation, the payments can be expected to remain level. This method cannot be used if the plan is closed to new entrants.

Normal Cost or Normal Actuarial Cost:

That portion of the Actuarial Present Value of plan benefits and expenses which is allocated to a valuation year by the Actuarial Cost Method.

Other Post-employment Benefits:

Post-employment benefits other than pension benefits. Other post-employment benefits (OPEB) include post-employment healthcare benefits, regardless of the type of plan that provides them, and all post-employment benefits provided separately from a pension plan, excluding benefits defined as termination offers and benefits.

Pay-as-you-go (PAYGO):

A method of financing a benefit plan under which the contributions to the plan are generally made at about the same time and in about the same amount as benefit payments and expenses becoming due.

Payroll Growth Rate:

An actuarial assumption with respect to future increases in total covered payroll attributable to inflation; used in applying the level percentage of projected payroll amortization method.

Plan Liabilities:

Obligations payable by the plan at the reporting date, including, primarily, benefits and refunds due and payable to plan members and beneficiaries, and accrued investment and administrative expenses. Plan liabilities do not include actuarial accrued liabilities for benefits that are not due and payable at the reporting date.

7. Glossary (cont.)

Plan Members:

The individuals covered by the terms of an OPEB plan. The plan membership generally includes employees in active service, terminated employees who have accumulated benefits but are not yet receiving them, and retired employees and beneficiaries currently receiving benefits.

Post-employment:

The period between termination of employment and retirement as well as the period after retirement.

Post-employment Healthcare Benefits:

Medical, dental, vision, and other health-related benefits provided to terminated or retired employees and their dependents and beneficiaries.

Select and Ultimate Rates:

Actuarial assumptions that contemplate different rates for successive years. Instead of a single assumed rate with respect to, for example, the investment return assumption, the actuary may apply different rates for the early years of a projection and a single rate for all subsequent years. For example, if an actuary applies an assumed investment return of 8 percent for year 2000, 7.5 percent for 2001, and 7 percent for 2002 and thereafter, then 8 percent and 7.5 percent are select rates, and 7 percent is the ultimate rate.

Appendix 1

The Actuarial Valuation Process

Step 1 – Determining the Present Value of Benefits

The first step of the actuarial valuation process is to determine the Present Value of Benefits (PVB). The PVB represents the estimated amount needed to provide all future OPEB benefits.

For a retiree it is based on the following assumptions:

- The current cost of medical benefits
- How fast medical costs will increase (medical trend)
- Mortality

For an employee it *also* considers the following assumptions:

- How many employees will leave before becoming eligible for the benefit
- At what age will employees retire
- What percentage of eligible retirees will elect coverage
- What percent of eligible retirees will have spouse coverage

Based on these assumptions, the actuary estimates a payment stream for each year in the future.

The streams of payments are discounted to the valuation date using a discount rate. The discount rate is similar to the rate of return you would expect to earn on funds in a bank or other investment vehicle. The sum of the discounted payment stream is the PVB.

Step 2 – The Actuarial Funding Method

If the entire present value of benefits was deposited into a trust when every new employee was hired, there would be (in the absence of actuarial losses caused by experience different than that assumed) no cost after the first year. The goal of an actuarial funding method is to spread the present value of benefits throughout the employee's career.

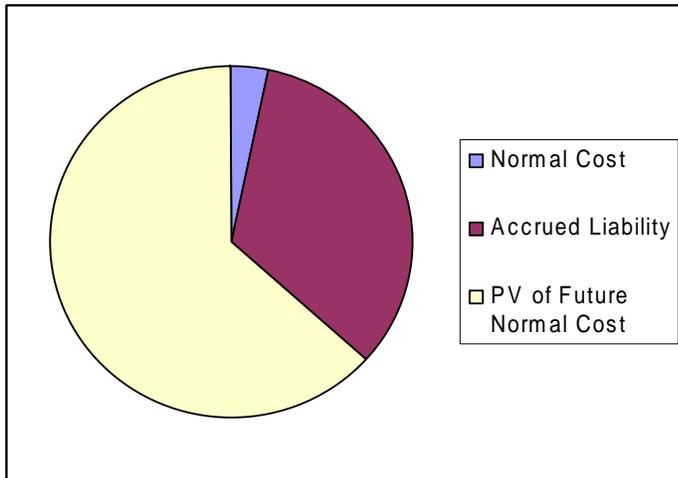
Accordingly, the second step of an actuarial valuation is to divide the Present Value of Benefits into three components:

- The normal cost (the liability accrual for the year)
- The accrued liability (the liability amount allocated for past service)
- The present value of future normal costs (the liability amount allocated to the future)

Appendix 1 (cont.)

The Actuarial Valuation Process (cont.)

The following chart illustrates the 3 components of the Present Value of Benefits:



For a retired employee, the present value of benefits equals the accrued liability.

Step 3 – Determining the Actuarially Determined Contribution (ADC)

The Actuarial Determined Contribution is equal to the sum of the:

- Normal Cost and
- An Amortization Payment of the Unfunded Accrued Liability

The unfunded accrued liability is equal to the accrued liability minus the assets (if any).

The amortization payment is not a straight line amortization payment. It is more like a mortgage payment on a house. It includes interest on the unfunded liability and a principal payment, and is designed to be a level payment. This could mean level as in a dollar payment, or as a level percentage of payroll. If it is a level percentage of payroll, the payment amount will increase as payroll increases.

Appendix 2

10 Year Cash Flow Projections

Below is a summary of the Plan's expected benefit payments (including hidden subsidy) for the next 10 years.

Fiscal Year Ending	Implicit Benefit Payouts	Explicit Benefit Payouts	Total Benefit Payouts
2018	\$1,270,000	\$11,438,000	\$12,708,000
2019	\$1,451,000	\$12,538,000	\$13,989,000
2020	\$1,560,000	\$13,602,000	\$15,162,000
2021	\$1,664,000	\$14,698,000	\$16,362,000
2022	\$1,733,000	\$15,799,000	\$17,532,000
2023	\$1,769,000	\$16,898,000	\$18,667,000
2024	\$1,792,000	\$18,035,000	\$19,827,000
2025	\$1,830,000	\$19,218,000	\$21,048,000
2026	\$1,820,000	\$20,337,000	\$22,157,000
2027	\$1,900,000	\$21,512,000	\$23,412,000

Please note:

- *The expected benefit payment stream shown above assumes that the covered population is a closed group, i.e. there are no new entrants or re-entrants. It also assumes no changes to the plan provisions, assumptions, or methods in the future.*
- *The Plan's actual benefit payments may be greater or lesser than the amounts shown, depending on the Plan's actual demographic experience, and claims experience.*

RFP 1140.4 Exhibit VII THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
INSURANCE CHECK LIST

COVERAGE REQUIRED	LIMITS (Minimums)
1. Worker's Compensation <input type="checkbox"/> Accident (Each) <input type="checkbox"/> Disease (policy limits) <input type="checkbox"/> Disease (each employee)	Statutory Employer's Liability \$100,000 per person \$500,000 aggregate \$100,000 per disease
2. General Liability <input type="checkbox"/> Products Liability & Completed Operations <input type="checkbox"/> Contractual Liability <input type="checkbox"/> Premises & Operations <input type="checkbox"/> XCU for explosion and/or cave in <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Personal Injury and Advertising <input type="checkbox"/> Medical Payment any one person	All items in No. 2: \$1,000,000 Combined Single Limit of Bodily & Property Damage per Occurrence \$5,000 per occurrence
3. Contractual Indemnity/Hold Harmless Exactly as Specified	
4. Automobile Liability Owned Hired, Non-owned & Leased <input type="checkbox"/> Bodily Injury Each person Each occurrence <input type="checkbox"/> Property Damage Each occurrence Or Combined Single Limit	 \$ 500,000 \$1,000,000 \$ 300,000 \$1,000,000
5. Excess Liability Combined Single Limit	\$1,000,000
6. The Maryland-National Capital Park and Planning Commission named as additional insured on all policies. The coverage is primary to all coverage the Commission may possess.	
7. Other Insurance <input type="checkbox"/> Renovation over \$50,000 All Risk Builders Coverage <input type="checkbox"/> Professional Liability For errors, omissions and negligent acts, per claim and per aggregate, with one year discovery period and no greater than a \$25,000 deductible. Combined Single Limit (Professional services contracts only)	 \$250,000.00
8. 30 days Cancellation Notice Required 45 days Cancellation Notice Required	Under \$500,000 Over \$500,000
9. Best's Guide A rating or better/ S&P Rating of BBBq	
10. The Certificate Must State Bid Number and Bid Title.	
BIDDER AND INSURANCE AGENT STATEMENT	
We understand the insurance requirements of these specifications and will comply in full if awarded this contract.	
Offeror Signature	Insurance Agency Signature