



OFFICE OF PROCUREMENT

Marc Elrich
County Executive

Avinash G. Shetty
Director

SOLICITATION AMENDMENT #2
Open Solicitation #1193175
August 27, 2026

PAGE 1 of 17 FOR THE PROCURMENT OF: **Montgomery County, MD Business Cohort Training Programs**

ALL SOLICITATION AMENDMENTS MUST BE ACKNOWLEDGED BY THE OFFEROR PRIOR TO CONTRACT EXECUTION. FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY BE CAUSE TO REJECT YOUR APPLICATION.

DESCRIPTION OF AMENDMENT:

Change #1: Attachment A, PMMD-45, General Conditions of Contract Between County & Contractor, is **replaced in its entirety with Attachment A ProForm-S-Gen-101, Montgomery County, Maryland General Terms and Conditions of Contract.**

The updated Terms and Conditions will apply to all Contracts executed on or after this Amendment's effective date.

THERE ARE NO OTHER CHANGES.

THE SOLICITATION PROVISION ENTITLED "SOLICITATION AMENDMENT" IS APPLICABLE TO THIS AMENDMENT. THE CHANGES SET FORTH ABOVE ARE HEREBY INCORPORATED INTO THE ABOVE-CITED SOLICITATION.

ISSUED BY:

for

Avinash G. Shetty, Director
Office of Procurement

NAME OF OFFEROR:

(Type or print)

NAME AND TITLE OF PERSON
AUTHORIZED TO SIGN PROPOSAL:

(Type or print)

OFFEROR'S SIGNATURE:

DATE : _____

Office of Procurement

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Attachment A

**MONTGOMERY COUNTY, MARYLAND,
GENERAL TERMS AND CONDITIONS OF CONTRACT**

- 1. DEFINITIONS.** As used in this Contract, the following words have the following meanings:
- 1.1. **“County Data”** means all data created by or in any way originating with the County, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the County, whether such data or output is stored on the County’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the County or by the Contractor.
 - 1.2. **“Contractor Data”** means all data created by or in any way originating with the Contractor, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the Contractor, whether such data or output is stored on the County’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the County or by the Contractor.
 - 1.3. **“Data Breach”** means the unauthorized access of Personal Information (PI), Individually Identifiable Health Information, and/or non-public County Data in the possession of the Contractor by a non-authorized person(s).
 - 1.4. **“Deliverable”** means any of the goods, services, documents and/or materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data created and/or provided by Contractor or its subcontractor(s) specifically for the County under a contract.
 - 1.5. **“Individually Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and:
 - 1.5.1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and
 - 1.5.2. relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and
 - 1.5.2.1. that identifies the individual; or
 - 1.5.2.2. with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
 - 1.6. **“Personal Information (PI)”** means personal data as defined in the Protection of Information by Government Agencies Act, currently found at MD Code Ann., State Government, §10-1301(c), as amended.
 - 1.7. **“Protected Health Information” (PHI)** means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy

Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.

- 1.8. **"Security Incident"** means the potentially unauthorized access by a non-authorized person(s) to Personal Information (PI), Individually Identifiable Health Information, and/or non-public County Data that the Contractor believes could reasonably result in the use, disclosure or theft of such information within the possession or control of the Contractor. A security incident may or may not turn into a Data Breach.

2. ACCOUNTING SYSTEM, ACCURATE INFORMATION, AND AUDIT.

- 2.1. 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.
- 2.2. 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.
- 2.3. 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.

3. ASSIGNMENTS AND SUBCONTRACTS.

- 3.1. 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.
- 3.2. The Contractor must identify all of its strategic business partners related to services provided under this contract, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who will be involved in any application development and/or operations.
- 3.3. 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 creates 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.

4. CHANGES.

- 4.1. The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed, upon a finding that such change is in the best interests of the County. 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.

5. COMPLIANCE WITH APPLICABLE LAWS.

- 5.1. Contractor must comply with all applicable Federal, State, County, and local laws and regulations including, but not necessarily limited to, the ones listed herein. 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.
- 5.2. Americans With Disabilities Act. The Contractor agrees to comply with the nondiscrimination requirements of Titles I and II, 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, and, without limitation, 28 C.F.R. § 35.200 et seq.
- 5.3. Accessibility of Web Content and Mobile Applications.
 - 5.3.1. Contractor warrants that any information technology it provides to or develops for the County under this contract complies fully with Americans with Disability Act accessibility requirements for online content and mobile applications, as set forth at 28 C.F.R. 35.200.
 - 5.3.2. Contractor must make available its current Voluntary Product Accessibility Template ("VPAT"), which describes the extent to which the application conforms to Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, and must update such VPAT from time to time in accordance with its standard practices and not less than annually. Contactor must also provide copies of its VPAT upon County request.
 - 5.3.3. The Contractor's services must comply in all material respects with Web Content Accessibility Guidelines (WCAG) 2.1 Level AA success criteria and conformance requirements. Contractor's conformance to WCAG 2.1, Level AA is a material contractual obligation.
 - 5.3.4. In the event the County receives any complaints or has concerns regarding the accessibility of the Contractor's services, the Contractor must promptly provide the County with a written response outlining its plan to address such complaints or concerns or must provide written notice that it is unable to resolve them. The Contractor must address such complaints or concerns and must communicate regularly and promptly with the County regarding the status of any remediation efforts.
- 5.4. Displaced Service Workers Protection Act. 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.

- 5.5. Earned Sick and Safe Leave. 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/>.
- 5.6. Ethics Requirements/Political Contributions.
- 5.6.1. The Contractor must comply with the ethics provisions contained in Chapters 11B and 19A of the Montgomery County Code, which include the following:
 - 5.6.1.1. a prohibition against making or offering to make certain gifts. Section 11B-51(a).
 - 5.6.1.2. a prohibition against kickbacks. Section 11B-51(b).
 - 5.6.1.3. a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
 - 5.6.1.4. 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).
 - 5.6.1.5. a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
 - 5.6.1.6. a prohibition against contingent fees. Section 11B-53.
 - 5.6.2. Through signature of this contract, the contractor certifies that the contractor has filed an initial statement with the Maryland State Board of Elections in compliance with MD Code Ann., Election Law, §14-104(b)(1), or is not required to file an initial statement as per MD Code Ann., Election Law, §14-104(c)(2).
 - 5.6.3. 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.
 - 5.6.4. Immigration Reform and Control Act. The Contractor warrants that both the Contractor and its subcontractors do not, and will 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.
 - 5.6.5. Intergovernmental Purchasing. 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 Md. Code Ann., State Fin. and Proc., §13-110(c).

- 5.6.6. 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.
- 5.6.7. 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.
 - 5.6.7.1. The Contractor assures the County that, in accordance with applicable law, it does not, and 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.
 - 5.6.7.2. The Contractor must bind its subcontractors to the provisions of this section.
- 5.6.8. No Retaliation. 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.
- 5.6.9. Prevailing Wage. The County's prevailing wage law, as found at §11B-33C of the County Code, applies to certain construction and mechanical systems service contracts. To the extent applicable, the County's prevailing wage requirements are enumerated within 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.
- 5.6.10. 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.

6. CONFIDENTIAL AND PROPRIETARY INFORMATION AND MATERIALS.

- 6.1. Subject to the Maryland Public Information Act (Md. Code Ann., Gen. Prov. §4-101, et. seq.) and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) must be held in confidence by the other party. Each party is, however, permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its personnel and agents to the extent that such disclosure is necessary for the performance of their duties under this contract.

- 6.2. Each party must advise each of its personnel and agents to whom any of the other party's confidential information is to be disclosed of the obligations hereunder.
- 6.3. The provisions of this Section do not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

7. CONSTRUCTION, CONFLICTING TERMS, AND VENUE.

- 7.1. 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.
- 7.2. Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the Contractor, and in the event of any inconsistency, these General Terms and Conditions of Contract, together with any Addenda thereto, supersede any terms and conditions supplied by the Contractor.
- 7.3. For purposes of litigation involving this contract, except for contract Disputes discussed in Section 11, Disputes, 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.

8. CONTRACT ADMINISTRATION.

- 8.1. The County's contract administrator is the Department representative designated by the Director, Office of Procurement, in writing, and is authorized to:
 - 8.1.1. serve as liaison between the County and the Contractor;
 - 8.1.2. give direction to the Contractor to ensure satisfactory and complete performance;
 - 8.1.3. monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
 - 8.1.4. serve as records custodian for this contract, including wage and prevailing wage requirements;
 - 8.1.5. accept or reject the Contractor's performance;
 - 8.1.6. furnish timely written notice of the Contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
 - 8.1.7. prepare required reports;
 - 8.1.8. approve or reject invoices for payment;
 - 8.1.9. recommend contract modifications or terminations to the Director, Office of Procurement;
 - 8.1.10. issue notices to proceed; and
 - 8.1.11. monitor and verify compliance with any MFD Performance Plan.
- 8.2. 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.

9. COST AND PRICING DATA.

- 9.1. Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost and pricing data be obtained from proposed awardees/contractors in certain situations. The Contractor guarantees that any cost and 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

10. DISPUTES.

- 10.1. 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.
- 10.2. 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 purposes 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).
- 10.3. The Contractor must notify the County's contract administrator of a claim in writing and must make a good faith effort to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee.
- 10.4. The Contractor must file a dispute with the Director within 30 days of the event giving rise to the claim (unless the contract provides otherwise), whether or not the contract administrator has responded to the written notice of claim or resolved the claim. The Contractor waives any dispute not timely filed. The Director, Office of Procurement, must dismiss a dispute that is not timely filed.
- 10.5. 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 necessary for determination of the dispute. All relevant documentation must be provided with the written dispute.
- 10.6. If the Director denies a dispute, in whole or in part, the Contractor may file a contract dispute appeal with the County's Chief Administrative Officer (CAO). The dispute appeal must be filed within 30 days after the party receives the Director's decision. If no decision is rendered by the Director within 45 days of the Director's receipt of the dispute, and the parties have not agreed to an extension of time, then the dispute appeal must be filed within 75 days after the party filed the dispute. Upon receipt of the contract dispute appeal, the CAO must review the dispute de novo, but the CAO must not consider any grounds except those presented by the filing party in the initial dispute filing. The dispute appeal must identify the relief sought and all grounds and materials supporting the request for relief. The appealing party must provide a copy of the dispute appeal to the opposing party, the Director and the County Attorney.
- 10.7. The Contractor may pursue judicial review of the final decision of the CAO to the Circuit Court in accordance with the Maryland Rules governing judicial review of administrative agency decision (Maryland Rules 7-201, et. seq.) and as provided under Section 11B-35(d) of the Code. Either the

Contractor or the County may appeal the Circuit Court's decision to the appellate courts of Maryland.

- 10.8. At the County's option, the Contractor agrees to be made a party to any related dispute involving another contractor.

11. DOCUMENTS, MATERIALS AND DATA – OWNERSHIP AND USE.

- 11.1. All documents, materials, and/or data generated 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.
- 11.2. The Contractor must not access County user accounts or data, except:
- 11.2.1. as necessary to provide the goods and services described in this contract;
 - 11.2.2. as required by the express terms of this contract;
 - 11.2.3. in response to service or technical issues; or
 - 11.2.4. at the County's written request.
- 11.3. 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. Except as may otherwise be set forth in this contract, Contractor must not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any information or material provided to Contractor by the County or developed by Contractor relating to the contract.

12. DURATION OF OBLIGATION.

- 12.1. 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.

13. ENTIRE AGREEMENT.

- 13.1. 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.

14. GUARANTEE AND WARRANTY.

- 14.1. The Contractor guarantees all goods, services, and construction provided under the contract, including any products or materials used in the course of providing the goods, services, and/or construction. The Contractor further guarantees that all products offered (or used in the installation of those products) carry a guarantee and/or warranty against any and all defects. These guarantees are in effect for one year from the date of the County's acceptance of the goods, services or construction, unless a longer period is: (1) agreed upon by the Parties in the contract; (2) provided by the manufacturer; or (3) specified in the County's written solicitation.

- 14.2. 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 additional cost to the County and to the County's satisfaction.
- 14.3. 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.
- 14.4. All warranties and guarantees must be in effect from the date of the County's acceptance of the goods, services, or construction.
- 14.5. 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.
- 14.6. The Contractor guarantees that all work will 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.

15. GENERAL INDEMNIFICATION AND HOLD HARMLESS.

- 15.1. The Contractor is responsible for any loss, personal injury, bodily 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.

16. INDEPENDENT CONTRACTOR.

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

17. INSPECTIONS.

- 17.1. 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).

18. INSURANCE.

- 18.1. Prior to contract execution by the County, the Contractor must obtain, at its own cost and expense, the minimum insurance specified by the County, 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 must not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the Contractor to the

County, nor is failure by the County to request evidence of this insurance in any way be construed as a waiver of Contractor's obligation to provide the insurance coverage specified.

- 18.2. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Prior to award of this contract, and prior to any contract modification extending the term of the Contract, and upon request by the County, the Contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance, as evidence of compliance with this provision. If requested by the County, the Contractor must provide a copy of any and all insurance policies to the County.
- 18.3. 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 where required by Minimum Insurance Requirements.
- 18.4. Contractor must provide to the County at least 30 days' written notice of a cancellation of, or a material change to, an insurance policy. A cancelled policy must be replaced with a new policy including the same insurance coverage(s) type and limits equal to or greater than the expired policy(s). A copy of the new Certificate of Insurance must be provided promptly to the County. In no event may the insurance coverage be less than that shown on the applicable Minimum Insurance Requirements documentation provided by the County.

19. INTELLECTUAL PROPERTY.

- 19.1. Ownership of all copyrights, patents, trademarks, trade secrets, and any other intellectual property existing prior to the Effective Date of this contract remains with the party that owned such rights immediately prior to the Effective Date ("Pre-Existing Intellectual Property").
- 19.2. If the Contractor will be preparing, providing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, design, process, device, material, or other item that is subject to a copyright, trademark, patent, or other property or privacy right, then the Contractor must obtain all necessary licenses, authorizations, permissions, and approvals related to its use and obtain all necessary licenses, authorizations, permissions, and approvals to permit the County to use such item(s) pursuant to the County's rights granted under the contract.
- 19.3. The Contractor agrees that any and all Deliverable(s) are the sole property of the County and must be available to the County at any time. The County has the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this contract. Deliverables do not include Pre-Existing Intellectual Property.
- 19.4. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverable(s), Contractor grants to the County a license to use such Pre-Existing Intellectual Property in connection with the County's permitted use of the Deliverable(s).

20. LIMITATION OF COUNTY'S LIABILITY.

- 20.1. Any obligation or liability of the County arising in any way from this contract is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage caps and notice requirements stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc., §§5-301, et seq. (the "LGTC"), the immunities and prohibited actions with respect to the County and its personnel set forth in Md. Code Ann., Cts. & Jud. Proc., §§5-501, et. seq., and the provisions governing contract claims against the County set forth in Md. Code Ann., Cts. & Jud. Proc. §5-5a-02, (together the "Applicable County Liability Statutes"), all as amended from time to time. Any indemnification given by the County in this contract is not intended to create any rights or

causes of action in any third parties or to increase the County's liability above the caps provided in the Applicable County Liability Statutes, as applicable.

21. NON-INFRINGEMENT AND INDEMNIFICATION.

- 21.1. The Contractor warrants that the Deliverables provided to the County do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party.
- 21.2. To the extent any Deliverable(s) incorporates any third party's intellectual property, Contractor warrants that Contractor has the right to use such third-party intellectual property in connection with provision of the Deliverable and that it has obtained, to the extent necessary, permission for the County to use the third-party intellectual property in connection with the County's permitted use of the Deliverable(s).
- 21.3. The Contractor must protect, indemnify, and hold harmless the County, and its agents and employees, from and against any and all claims, suits, actions, liabilities, damages, losses, demands, and judgments (including, without limitation, litigation costs, lost employee time, and counsel fees) arising out of or in connection with any third party claim based upon or arising out of any allegation of infringement, misappropriation, 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, the Contractor-provided products/services this contract and/or the performance by the Contractor of any of its activities or obligations under this contract.
- 21.4. If any equipment, software, services (including methods) products or other intellectual property used or furnished by the Contractor is, or in the Contractor's reasonable judgment is likely to be, held to constitute an infringing product, the Contractor must, at its expense and option, either:
 - 21.4.1. Procure the right for the County to continue using the Product(s);
 - 21.4.2. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
 - 21.4.3. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the contract, or only alters the Product(s) to a degree that the County agrees to and accepts in writing.
- 21.5. The Contractor must report to the County, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to any product, service, or data delivered under this contract.

22. PAYMENT AUTHORITY.

- 22.1. No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the Contractor for legal fees, late fees, or shipping fees that are not provided for in the contract. The Contractor must not 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.
- 22.2. If this contract provides for an additional contract term 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.

23. P-CARD OR SUA PAYMENT METHODS.

- 23.1. 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. 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.

24. PERSONAL PROPERTY.

- 24.1. 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.

25. PRIVACY AND INFORMATION SECURITY.

- 25.1. Encryption of Data at Rest. The Contractor must ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Information, unless the Contractor presents a justifiable position approved by the County that Personal Information must be stored on a portable device in order to accomplish work as defined in the contract.
- 25.2. Health Insurance Portability and Accountability Act (HIPAA). 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.
- 25.3. Maryland Protection of Information by Government Agencies ("PIGA"). 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, et seq.

- 25.4. No Sale or Redisclosure. Any data provided by the County to the Contractor under this contract that constitutes personal records or sensitive data, both as defined by Md. Code Ann., State Gov't § 10-1702, or geolocation data must not be sold or redisclosed by the Contractor. Contractor must bind its subcontractors to these no-sale and no-redisclosure requirements.
- 25.5. Payment Card Industry Compliance. In any contract where the Contractor provides a system or service that involves processing credit card payments ("Payment Solution"), the Contractor must ensure that the Payment Solution is compliant with the Payment Card Industry Data Security Standard ("PCIDSS"), as determined and verified by the County's Department of Finance. The Payment Solution must process credit card payments using a Merchant ID ("MID") obtained by the County's Department of Finance and held in the County's name as the merchant of record unless the Department of Finance determines, in its sole discretion, that use of a County MID is not feasible for the specific Payment Solution. Use of an MID obtained and held by the Contractor in the Contractor's name as merchant of record is prohibited unless the Contractor obtains prior written approval from the County's Department of Finance. Approval may be granted only as a last resort measure when the Department of Finance determines that no technically or operationally feasible County-issued MID configuration is available. Any such approval will be limited, conditional, and subject to additional security, reporting, and monitoring requirements as established by the Department of Finance. The Contractor must comply with all requirements set forth in the County's PCI Security Addendum and Vendor Security Addendum.
- 25.6. Protection of County Data. Contractor must safeguard the confidentiality, integrity and availability of County Data and comply with the following conditions:
 - 25.6.1. Contractor must implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures must be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.
 - 25.6.2. Contractor must ensure that all County Data is backed up and is recoverable by the Contractor.
 - 25.6.3. All personal data must be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data.
 - 25.6.4. County Data must not be copied, disclosed or retained by the Contractor for subsequent use in any transaction that does not include the County.

- 25.6.5. All County Data must be stored solely in data centers located in the United States. Contractor must not allow its employees, agents or subcontractors to store County data on portable devices, including personal computers, except for devices that are used and kept only at its data centers located in the United States. The Contractor must not permit its personnel and contractors to access County Data remotely except as may be required to provide technical support.
- 25.6.6. Prohibition on Use of County Data for AI Training:
- 25.6.7. Contractor must not use, and must not permit any third party to use, any County Data for the purposes of training, fine-tuning, or otherwise improving any artificial intelligence (AI), machine learning (ML), or similar models, including large language models, neural networks, or any data processing tools that derive insights or functionality through algorithmic training, unless specifically defined in the contract.
- 25.6.8. No Derivative Works from County Data:
- 25.6.9. Contractor must not create, or assist in the creation of, any derivative works or data sets based on County Data for the purpose of developing or enhancing any AI models or algorithms.
- 25.6.10. Data Segregation:
- 25.6.11. Contractor must implement appropriate technical and organizational measures to ensure that County Data is segregated from any data sets used for AI training.
- 25.6.12. Prior consent to AI Features:
- 25.6.13. Contractor must not introduce or make AI features available without explicit County approval. County must retain decision-making authority over the use of AI, even when Contractor introduces new features after the contract is signed.

26. RIGHT TO REMOVE INDIVIDUALS.

- 26.1. The County has the right at any time to require that the Contractor remove from involvement with the contract any Contractor employee, agent or representative who the County believes is detrimental to its working relationship with the Contractor or to the provision of services to the public.

27. SECURITY INCIDENT OR DATA BREACH NOTIFICATION AND LIABILITY.

- 27.1. The Contractor must report a Security Incident to the County within twenty-four (24) hours.
- 27.2. The Contractor must take all commercially reasonable measures to fully investigate a Security Incident and to confirm whether a Data Breach has occurred.
- 27.3. In the event the Contractor learns of, or reasonably believes that there has been, a Data Breach, the Contractor must:
 - 27.3.1. Notify the County's contract administrator no later than three (3) business days by telephone and email. Contractor's report must include, to the extent known:
 - 27.3.1.1. The nature of the unauthorized use or disclosure;
 - 27.3.1.2. Identification of the data used or disclosed;
 - 27.3.1.3. Identification of any individual(s) whose personal information or PHI was used or disclosed;

- 27.3.1.4. Identification of the individual(s) or group(s) who made the unauthorized use and/or received the unauthorized disclosure;
- 27.3.1.5. What action Contractor has taken and/or plans to take to mitigate any damages arising out of the breach.
- 27.3.1.6. Any other such information as reasonably requested by the County.
- 27.3.2. Take all commercially reasonable measures to fully to investigate and resolve the Data Breach;
- 27.3.3. Cooperate with the County and provide the County with any information needed by the County to comply with its legal obligations pursuant to the PIGA, HIPAA, and any other applicable laws. Such information may include, but is not necessarily limited to, the names and contact information of all persons whose personal information was acquired and/or was possessed by the Contractor as part of its performance under the contract;
- 27.3.4. Keep the County apprised of the status of Contractor's investigation insofar as it pertains to County Data and/or the contract, including, but not limited to, advising the County when any element of the Contractor's initial report, set forth in Paragraph 28.3 above, that was unknown becomes known;
- 27.3.5. Promptly implement appropriate remedial measures, if necessary; and;
- 27.3.6. Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 27.4. If a Data Breach is a direct result of the Contractor's breach of its contractual obligations to encrypt personal data or otherwise prevent its release, the Contractor must bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

28. TERMINATION FOR CONVENIENCE.

- 28.1. 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. Payment for goods and/or services provided pursuant to the contract and accepted by the County prior to the date of termination, will be compensated in accordance with the contract.
- 28.2. If the contract is terminated for convenience, the Contractor may seek reimbursement for actual, reasonable expenses incurred by the Contractor, prior to the date of notification of termination, specifically in connection with the Contractor's good faith efforts to perform, or prepare to perform, the subject contract. The Contractor is not entitled to reimbursement of costs for items that may be repurposed or returned by the Contractor. The Contractor is not entitled to recovery of anticipated profit, ordinary costs of doing business, or shared costs (i.e., a percentage of contractor's general operating costs). 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.

29. TERMINATION FOR DEFAULT.

- 29.1. The Director, Office of Procurement, may terminate the contract in whole or in part, whenever the Director, Office of Procurement, determines that the Contractor is:
 - 29.1.1. defaulting in performance or is not complying with any provision of this contract;
 - 29.1.2. failing to make satisfactory progress in the prosecution of the contract; or
 - 29.1.3. endangering the performance of this contract.
- 29.2. 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.
- 29.3. In addition to any other remedies provided by law or the contract, the Contractor must compensate the County for additional costs incurred by the County 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. TIME.

- 30.1. Time is of the essence.

31. TRANSITION FOLLOWING TERMINATION.

- 31.1. Upon termination or the expiration of the contract, the Contractor must, upon request by the County:
 - 31.1.1. Return to the County all County Data in a mutually agreed-upon format; and
 - 31.1.2. Preserve, maintain, and protect all County Data for a period of up to ninety (90) days after the termination or expiration date, so that the County can ensure that all returned data is readable.
- 31.2. Following the ninety (90) day retention period, or earlier if directed by the County, Contractor must, unless legally prohibited from doing so, securely dispose of all County Data in Contractor's possession in all of its forms.
- 31.3. County Data must be permanently deleted and must not be recoverable, according to NIST guidelines for media sanitization (NIST SP 800-88); and certificates of destruction must be provided to the County.
- 31.4. Upon request by the County, Contractor must perform preparatory and/or close-out work to assist the County in transitioning services to a new vendor to ensure continuity of services.

32. WORK UNDER THE CONTRACT.

- 32.1. 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.

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