

**HOWARD COUNTY, MARYLAND
AGREEMENT
PA 41-2012**

THIS AGREEMENT made this ____ day of December, 2011, (the "Agreement") is by and between Howard County, Maryland, a body corporate and politic, (the "County") and Recall Total Information Management, Inc. and Recall Secure Destruction Services, Inc., both subsidiaries of Recall Corporation, 180 Technology Parkway, Norcross, Georgia 30092, Federal Employer Identification Number 363795227, Telephone Number 770-776-1200 (collectively, the "Contractor").

WHEREAS, the said Contractor, in consideration of the payments hereinafter specified and agreed to be made by said County, hereby covenants and agrees to perform all services (as defined in Attachment A), in strict and entire conformity with (1) the terms of this Agreement; and (2) (a) the Attachment A entitled "Services to be Performed", (b) any Purchase Order subsequently issued, (c) Contractor's response to the Request for Proposal No. 03-2012, Records Management and Shredding Services, Offsite, (d) the Best and Final Offer dated November 2, 2011, and (e) any amendments or revisions thereto executed in writing by both parties (2(a)-2(e) collectively, the "Proposal") attached hereto and incorporated herein.

NOW THEREFORE, in consideration of the mutual promises and covenants, the parties hereto agree that the County shall pay the Contractor, an amount as set forth herein, for services rendered in accordance with this Agreement, the other attachments hereto, the Proposal, and the Purchase Order, all of which are hereby incorporated into and made a part of this Agreement. Notwithstanding any other terms or provisions of this Agreement, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the Howard County Council, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents), the County shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay except as set forth in Section 2.9 below. In addition the parties hereto agree as follows:

1. Contractor's Duties.

The Contractor shall be an independent Contractor and not an employee of the County, and shall be responsible for the reporting and remittance of all state and federal taxes. The Contractor shall perform the services outlined in Attachment A hereto. The Contractor's services will be provided with due care and in accordance with all applicable industry standards. The Contractor shall perform the services under the supervision of the Department of Technology & Communications Services, Records Management Division, of the County, who shall have authority to administer the Agreement.

2. Compensation.

2.1 In consideration of the services to be provided by the Contractor, the County shall pay the Contractor in accordance with the following for the first year of the Term of this Agreement:

2.1.1 Group A: Off-Site Records Management:

Service Code	Description	Qty	Rate	Service Freq
1 DMS_RL_US_GROUP		1		
	The following charges are for storage of containers			
STORE_S7030	Business Carton 30Ltrs (1.2 CuFt)	4500	0.25	Monthly
STORE_S7060	Business Carton 60Ltrs (2.4 CuFt)	2500	0.50	Monthly
Store_Filefolder LF	Store- FileFolder LF	0	0.64	As Requested
Minstore_Client	Minimum Retention Charge	0	75.00	Monthly
	The following line items are standard service fees:			
Fuelschg1_Item	Fuel Surcharge per trip - Rates are subject to adjustment based on variations in published fuel indices	0	6.25	As Requested
RFIDADHOC1_Client	RFID Ad Hoc Audit Minimum Charge	0	100.00	As Requested
RFIDADHOC1_Client2	RFID Ad Hoc Audit Per Item Charge after Minimum Charge	0	0.08	As Requested
RFIDRPTITM_Client	RFID Annual Audit Minimum Charge	0	50.00	Yearly
RFIDRPTITM_Client2	RFID Annual Audit Per Item Charge after Minimum Charge	0	0.04	Yearly
Sell_Prodstock10	Standard Carton - bundle of 25 - Invoiced as: STD Ctn(30ltrs1.2cf)-QTY25	150	41.40	As Requested
Sell_CRFIDTAG	RFID Carton Tag	1	0.30	As Requested
Sell_CRFIDTAG	RFID Carton Tag	7000	0.30	One Time
	The above line item specifically is in reference to the initial inventory being barcoded with RFID tags.			
	The following processing charges will be applied when encountered:			
Add_Container	AddNew-Container	7000	0.00	One Time

Service Code	Description	Qty	Rate	Service Freq
	The above line item specifically is in reference to the initial transfer of 2,500 2.4 cuft cartons & 4,500 cuft cartons (7,000 cartons total)			
Add_Container	AddNew-Container	600	1.50	As Requested
Add_Filefolder	AddNew-FileFolder	50	1.50	As Requested
Pull_Container	Retrieval-Container	3000	1.50	As Requested
Pull_Filefolder	Retrieval-FileFolder	300	1.50	As Requested
Refile_Container	Refile-Container	2600	1.50	As Requested
Refile_Filefolder	Refile-FileFolder	250	1.50	As Requested
NIF_Client	Unsuccessful Search-Carton	0	5.00	As Requested
Destroy_Container	Destruction-Container	100	3.75	As Requested
Permut_Container	PermanentRemoval-Container	0	4.00	As Requested
Permut_Filefolder	PermanentRemoval-FileFolder	0	4.00	As Requested
CAREWO_US	Email/Fax CARE Order Fee	0	4.00	As Requested
Re-Box0_Client	Reboxing-Ctn 30Ltrs(1.2 CuFt)	1000	9.00	One Time
	The above line item specifically is in reference to converting 1,000 2.4 cuft cartons to 1.2 cuft cartons for the initial move			
Re-Box0_Client	Reboxing-Ctn 30Ltrs(1.2 CuFt)	0	9.00	As Requested
Dataentry1_Client	Data Entry - Per Item	1	0.40	As Requested
Dataentry_Client	Data Entry-Per 15 Min Fee	1	6.00	As Requested
Faxback_Client	Faxing Per Page (\$1.75 first page)	1	0.25	As Requested
Labor_Client	Labor - Special Projects, Purges, Data Entry, Etc. 8AM to 5PM M-F (After-Hours: Addn'l \$15 per hour)	1	40.00	As Requested
	The above line item specifically is in reference to per hour Labor charge of \$40.00 per hour			
US_ITEM/PROJECT	Client Viewing Room & Copier - Contractor Site Retrievals: \$125.00/Visit. Averaging 160 visits per year.	1	20,000.00	One Time
	The following special charges will be applied when encountered:			
Routine_Item	Routine Courier Services Next day service provided order is received by 3:00 PM. Delivery/collection will be before 5pm the next business day. Orders placed after 3:00 PM will be completed the 2nd business day before 5PM. Maximum amount of cartons requested per work order is 50.	0	17.00	As Requested
Pickup_Container	PerItemCollection-Container	400	1.40	As Requested

Service Code	Description	Qty	Rate	Service Freq
Pickup_Filefolder	PerItemCollection-Filefolder	400	1.40	As Requested
Delivery_Container	PerItemDelivery-Container	400	1.40	As Requested
Delivery_Filefolder	PerItemDelivery-Filefolder	400	1.40	As Requested
US_ITEM/PROJECT	Retrievals Not Delivered to The County But To Another Location Outside The County - Within 50 Miles Radius. \$1.50/CF + \$.0.75 Per Mile	1	0.75	One Time
Priority_Item	Priority Courier Services Upcharge - Same day service if order is placed before 10:00 AM. Delivery/collection will be between 12:00 PM - 5:00 PM. Orders placed after 10:00 AM and before 3:00 PM will be completed next business day by 12:00 PM. Maximum amount of cartons requested per work order is 25. (Invoiced as: PriorityUpChargeCourier&orItem - billed as upcharge)	0	23.00	As Requested
Priority_Item2	Priority Courier Services - additional per item (billed as upcharge)	0	2.09	As Requested
Expedite2_Item	Expedited 2 Courier Services Upcharge-Same day service within 2 hours of order being placed if ordered between 8:00 AM - 4:00 PM. Maximum amount of cartons requested per work order is 10. (Invoiced as: Exp2UpCharge-Courier &/or Item (billed as upcharge))	1	38.00	As Requested
Expedite2_Item2	Expedited Courier Services 2 - additional per item (billed as upcharge)	1	8.60	As Requested
Custom_Item	Custom Trip Upcharge - Emergency after hour's courier service, weekends, holidays and special collection projects. There is no maximum amount and may be delivered urgently if logistically possible; however, if the total amount of items requested exceeds 10 items, the ICC must determine the best ETA for the order.(Invoiced as: Exp1UpCharge-Courier &/or Item (billed as upcharge))	1	99.00	As Requested
CourierWat_Client	Courier Waiting-Per 15 Min (applies only after initial 15 minutes of wait time)	0	15.00	As Requested
End of Group				

2.1.2 Group B – Secure Document Shred

Service Code	Description	Qty	Rate	Service Freq
3 SDS Group_US		1		
	Secure Document Service - fees per bin			
US_64G	64 Gal (240L) Bin	10	6.50	Weekly
US_CON	32 Gal (120L) Console	50	6.50	Weekly
US_CON	32 Gal (120L) Console	100	6.50	Weekly
US_64G	64 Gal (240L) Bin	15	6.50	Weekly
US_LBS	Per Pound	0	0.15	As Requested
US_LETTR	Per Carton	1	3.75	As Requested
US_EMD_HDD	Electronic Media Destruction- Hard Disk Drives - Per Unit Destruction Service for pre-extracted 3.5/2.5in hard drives.	1	10.00	As Requested
US_EMD_MTD	Electronic Media Destruction -Magnetic Tape Destruction - Per Pound - Destruction service for magnetic tape media formats	1	2.00	As Requested
	The following line items are standard service fees:			
US_SCS	Service Charge Per Stop	1	12.95	As Requested
US_FIRST	First Service Fee	1	0.00	One Time
US_MINCH	Minimum Charge Per Stop	1	19.45	As Requested
End of Group				

2.2 Requested increase in fees for each subsequent renewal year of this Agreement during the Term and any Renewal Term shall be calculated in accordance with Contractor’s then-current pricing methodology and shall be increased by an amount calculated by applying to the then-current fees the percentage increase in the consumer price index (all items, US, as published by the United States Department of Labor, Bureau of Labor Statistics) during the period since the then-current fees were established not to exceed five percent (5%).

2.3 Additional services requested by the County above and beyond those set forth in the solicitation will be subject to the Contractor’s then-current standard rates. During the Term and any Renewal Term of this Agreement, County agrees to pay a minimum monthly fee as specified in Section 2.1. After the Effective Date hereof, County shall maintain a minimum of 4,500 standard carton equivalents (i.e., 1.2 cu feet) of storage throughout the Term and all subsequent Renewal Terms. In the event that County shall, at any time, maintain less than 4,500 cartons in storage, County will be liable for and shall pay to Contractor a monthly amount equal to the storage charges applicable to the minimum volume of Services as identified on Schedule 1. For example, if the per carton storage fee is \$0.35 and the minimum number of cartons required is 15,000, then the minimum storage fees payable by County would be \$5,250 per month, even if the number of cartons actually stored with Contractor is 14,500.

2.4 In no event shall the compensation paid to the Contractor exceed the sum of One Hundred Forty Four Thousand Six Hundred Ninety Two and 50/100 Dollars (\$144,692.50) plus the amounts set forth below in Section 2.10, if such fees become applicable, in any contract year provided, however, that the County may entertain a request for escalation in any contract year subsequent to the first year in accordance with Paragraph 3.2 of this Agreement.

2.5 The Contractor shall submit invoices to the County monthly. The Contractor's invoices shall reflect the:

- 2.5.1 Contractor's name
- 2.5.2 Address
- 2.5.3 Federal tax identification number
- 2.5.4 Contract number, (the first two digits are 44XXXXXXXX)
- 2.5.5 Purchase Order number the first two digits are 2XXXXXXXXXX)
- 2.5.6 Contract line number
- 2.5.7 Unit price and extended price (the unit price must match a contract line)
- 2.5.8 Description of goods provided and/or services performed

2.6 The proper form of County invoices requires that the information above be included on all invoices.

2.7 Invoices for the monthly storage fees and certified shreds shall be submitted to the Department of Technology and Communication Services, Records Management Division, Dorsey Building, 9250 Bendix Road, Columbia, Maryland 21045, Attention: Phyllis Pritchett. Invoices for all other services shall be submitted to the individual agency requesting the service. All monthly retention (storage) charges due under this Agreement will be invoiced monthly in advance. All other amounts due under this Agreement will be invoiced monthly in arrears. Invoices in the proper form and approved by the County shall be paid by the County within 30 days of receipt thereof. If payment has not been made by County in accordance with this Agreement, and no dispute is in effect, then Contractor may suspend part of the services provided to County until all payments due are made; however, under no circumstances shall the Contractor refuse to retrieve documents at any time under this Agreement except as permitted in Section 6.3. If services are suspended during a Term or Renewal Term of this Agreement, due to non-payment by the County, the County will remain responsible for payment of all retention and necessary activity charges accruing during such suspension.

2.8 Invoices may be returned for correction. The County reserves the right to approve such invoices, in its sole reasonable discretion, and to request such detail and additional information as the County, in its reasonable discretion deems appropriate.

2.9 Upon termination of this Agreement for any reason (including, but not limited to, default of either party or termination for convenience), the County shall pay Contractor for (a) the services rendered up to the date of termination, (b) the minimum volume requirements set forth in this Agreement, (c) costs associated with termination and transition of the services as set forth in this Agreement, including but not limited to permanent removal fees, and (d) the Transition Assistance Payback Amount per the schedule set forth below. Thereafter, neither party shall have any further obligation under this Agreement, other than for provisions intended to survive termination or expiration of this Agreement and indemnification claims for losses as expressly provided in this Agreement and arising prior to such termination date.

2.10 Transition Assistance: On County’s request, Contractor will provide permanent withdrawal charge funding assistance in an amount not to exceed Thirty-Two Thousand 11/100 (\$32,000.00) (“Transition Assistance”) to close County’s account(s) with County’s previous supplier(s).

2.10.1 Payment of the Transition Assistance will be in the form of a direct payment to County’s present supplier(s). Contractor must receive a copy of the permanent withdrawal charge invoice prior to issuing payment.

2.10.2 Payment will be forwarded only for those cartons that Contractor receives at the time of relocation - not materials that have previously been removed and/or destroyed, and not materials that are forwarded to the any other supplier(s) after the relocation project has begun.

2.10.3 County agrees to relocate all of its document storage materials to Contractor within a reasonable time after the execution of this Agreement.

2.10.4 County shall co-operate fully in arranging and completing the collection and relocation of materials by Contractor from County’s present supplier(s).

2.10.5 If County chooses to terminate Contractor’s services prior to the end of the Term of this Agreement for any reason, County will be charged for the payback of any unpaid portion of the Transition Assistance paid by Contractor for the permanent withdrawal of County materials from previous supplier(s). County will pay Contractor based upon the following table for a five (5) year Agreement:

Year of the Agreement	Percentage/Amount Charge of Transition Assistance Payback
Year 1	100%*
Year 2	80%*
Year 3	60%*
Year 4	40%*
Year 5	20%*

* Percentage of actual permanent removal fees charged to the Contractor by the County's previous supplier, as evidenced by a paid-receipt for such charges as incurred at the time of removal.

3. Term.

3.1 This Agreement shall be effective when executed by the County and shall continue for five (5) years (the "Term"), at which time the County may exercise its option to renew set forth in Paragraph 3.2 below, unless sooner terminated pursuant to Paragraphs 5 and 7 hereof.

3.2 The County reserves the right to renew this Agreement for five (5) additional years in one-year increments on the same terms and conditions set forth herein, (each a "Renewal Term") by giving Contractor written notice prior to the expiration of the then current term. Prices offered shall be firm against any increase for one year from the effective date of this Agreement. Prior to the commencement of subsequent renewal periods, it shall be the Contractor's responsibility to notify the Issuing Office in advance of any requested price changes. The County will entertain requests for escalation in accordance with the current Consumer Price Index at the time of the request or up to a maximum 5% increase on the current pricing, whichever is lower. In the event any renewal changes the terms and conditions set forth herein, the approval of the Howard County Council may be required.

4. Contractor's Representations and Warranties. The Contractor hereby represents the following:

4.1 The Contractor is a corporation, duly formed and validly existing under the laws of the State of Delaware and is qualified to do business and is in good standing in the State of Maryland.

4.2 The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution, delivery and performance required under this Agreement.

4.3 The person executing this Agreement for the Contractor warrants that it is duly authorized by the Contractor to execute this Agreement on the Contractor's behalf.

4.4 The services to be provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations and licensing requirements.

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to provide the services rendered under this Agreement, and shall present such licenses to the County upon its request for the same.

4.6 All representations and warranties made in the Affidavit and the Proposal response remain true and correct in all respects.

4.7 SUBJECT TO SECTION 20.1, EXCEPT AS PROVIDED IN THIS SECTION, CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO ITS SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND CONTRACTOR HEREBY DISCLAIMS THE SAME.

5. Termination:

5.1 Termination for Convenience: The County may terminate this Agreement, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. The County shall pay all reasonable costs incurred by the Contractor up to the date of termination plus those amounts set forth in Section 2.9 above. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed, plus the amounts set forth in Section 2.9 above. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

5.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the Agreement, the County may terminate the Agreement for default if such failure to perform is not cured within thirty (30) days of written notice to Contractor. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the Agreement. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination, plus those amounts set forth above in Section 2.9.

5.3 County shall be in default under this Agreement upon the occurrence of any one or more of the following events ("County Default"): (i) failure of County to pay when due any undisputed amounts owed hereunder and its failure to cure the same within ten (10) days of receipt of written notice of such failure to pay; or (ii) County's breach of any other provision of this Agreement, which, if capable of cure, is not cured within thirty (30) days thereof.

6. Remedies for Default.

6.1 The County shall have the right upon the happening of any Contractor Default and reasonable opportunity to cure, without providing written notice to the Contractor:

6.1.1 In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part; and/or

6.1.2 To suspend the Contractor's authority to receive any undisbursed funds, except those amounts set forth in Section 2.9; and/or

6.1.3 To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

6.2 Upon termination of this Agreement for default, the County will pay the Contractor for services provided up to the date of termination, plus those amount set forth in Section 2.9, less the amount of damages caused by the default.

6.3 Upon the occurrence of any County Default, Contractor at its sole discretion may exercise any, or any combination, of the following remedies: (a) refuse to provide further services with respect to County Materials (as defined in Attachment A) until the County Default is cured; however, under no circumstances shall the Contractor refuse to retrieve documents at any time under this contract except as set forth herein; (b) demand in writing that County pick up all County Materials at Contractor's facility or facilities by a specified date, which date shall be no less than forty-five (45) days after the date of such notice; (c) deliver County Materials to County at any County locations with thirty (30) days notice thereof; (d) terminate this Agreement; (e) seek to recover all damages suffered under this Agreement (including those amounts set forth in Section 2.9 above); (f) exercise all rights granted to warehousemen by the Uniform Commercial Code as adopted in the state where County Materials are stored; and (g) such other rights and remedies as are available under applicable law. In addition to the remedies stated above, Contractor shall have the right to destroy any County Materials remaining in its possession after County fails to comply with three (3) successive demands made pursuant to subsection 6.3 (b) above, so long as such destruction renders such County Materials completely unreadable and unrestoreable. Notwithstanding the foregoing warehousemen's lien rights, under no circumstances shall Contractor exercise such lien rights to the following extent: (1) Contractor shall not sell or transfer any County Materials in the exercise of such rights; and (2) Contractor shall, even during the enforcement of such lien rights or any dispute between the Parties, cooperate fully and completely in supplying County with any and all County Materials to the extent they are needed by County to (i) comply with a subpoena, request for production of documents, or any other legal order or process; (ii) support a request by County's clients for a return of their files, records and/or materials; and/or (iii) fulfill any legal obligations or requirements imposed upon County which requires a return of such County Materials. Further, subject to the exceptions set forth herein in Section 6.3(f), Contractor's sole remedy with respect to any warehouseman's lien rights hereunder shall be to retain any County Materials that are subject to such lien until Contractor receives payment in full of all amounts secured by the lien. Contractor shall have no liability to County or any other person for taking any actions permitted by this section. The exercise by Contractor of any one or more of its rights under this Agreement shall not preclude Contractor's exercise of any one or more of its other rights or remedies.

7. Remedies Cumulative and Concurrent.

No remedy herein conferred upon or reserved to a party is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to a party shall be concurrent and may be pursued separately, successively or together against the other party, and every right, power and remedy given to a party may be exercised from time to time as often as may be deemed expedient by such party.

8. Insurance.

The Contractor shall be required to provide insurance required by the County pursuant to the insurance requirements specified in the solicitation. The Contractor shall maintain the insurance coverages required by the County while this Agreement is in force, and provide documentation of such insurance in a form reasonably satisfactory to the County. Such documentation may, in the discretion of the County, be in the form of binders or declarations from the insurance company.

9. Confidential Information.

The Contractor shall not disclose any documentation and information disclosed to the Contractor in the course of its performance of duties hereunder with respect to the past, present and future County business, services and clients without the express written consent of the County.

10. Ethics.

10.1 The Contractor certifies that the officer of the corporation who is executing this Agreement has read and understands Attachment B, entitled Howard County Charter and Code References to Ethics, which contains the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest.

10.2. The Contractor certifies that it has (1) not been a party to an agreement to bid a fixed or uniform price; (2) not offered nor will offer any gratuity to any county official or employee; and (3) not violated any of the fair employment provisions of Code Sec. 4.119 Ethics and Fair Employment Practices detailed in Attachment B.

11. Assignment.

Neither the County nor the Contractor shall assign, sublet or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other, such consent not to be unreasonably withheld, delayed or conditioned; provided, however, that either party may assign this Agreement in whole or in part to an affiliate or in connection with a change of control (or a sale of a material portion of the assets of the entity or business unit performing or receiving the services, as the case may be) without the requirement of obtaining the consent of the other party. Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the County, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Agreement.

12. Delegation of Duties.

The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the County, such consent not to be unreasonably withheld, delayed or conditioned.

13. Indemnification.

13.1 The Contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all third party claims, suits, or demands including reasonable attorney fees which may be made against the County, its employees, agents or officials resulting from any negligent or willful act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.

13.2 To the extent provided by the Local Government Tort Claims Act, found at Sections 5-301 through 5-304 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as supplement from time to time, and the limitations of liability set forth therein, and subject to appropriations by the Howard County Council. County shall defend, indemnify and hold harmless Contractor, its officers, directors, employees and agents against any liability, cost or expense, directly arising out of third party claims, demands or actions relating to (a) any allegation that Contractor's transportation, possession or storage of County Materials is unauthorized by any third party (b) County's negligence or willful misconduct or (c) County's breach of this Agreement.

13.3 In the event that there is a conflict between the indemnification provision set forth in the Purchase Order Terms and Conditions and/or the General Conditions of the solicitation and/or this Agreement, the terms set forth in the Agreement shall govern.

14. Integration and Modification.

This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the party sought to be bound thereby.

15. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

16. Conflicting Terms.

16.1 The Contractor acknowledges that any Purchase Order issued on or after the effective date of this Agreement is hereby integrated and made a part of this Agreement, provided, however that if a conflict arises between the provisions of this Agreement and the Purchase Order, the provisions of this Agreement shall prevail.

16.2 In the event of a conflict between the Proposal and this Agreement, the provisions of this Agreement without the conflicting terms in the Proposal shall prevail.

17. Severability.

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

18. Time is of the Essence.

Time is of the essence with respect to performance of the terms and conditions of this Agreement.

19. Funding.

The contractual obligation of the County under this Agreement is contingent upon the availability of appropriated funds from which payment for this Agreement can be made.

20. LIMITATION OF LIABILITY.

20.1 NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT:
(A) IN THE EVENT OF ANY LOSS, DAMAGE OR DESTRUCTION CAUSED BY CONTRACTOR'S BREACH OF ANY OBLIGATION TO COUNTY, CONTRACTOR'S LIABILITY SHALL BE LIMITED TO \$2.00 PER REGISTERED ITEM; (B) WITH RESPECT TO ALL OTHER CLAIMS, (I) IN THE EVENT A CLAIM ARISES OUT OF OR IN CONNECTION WITH ANY FAILURE OR DELAY IN THE PERFORMANCE OF A SERVICE, CONTRACTOR'S LIABILITY

SHALL BE LIMITED TO THE FEE PAID HEREUNDER BY COUNTY FOR THE PARTICULAR SERVICE, AND (II) IN NO EVENT WILL CONTRACTOR'S CUMULATIVE AGGREGATE LIABILITY EXCEED A MAXIMUM AMOUNT EQUAL TO THE FEES PAID HEREUNDER DURING THE 12-MONTHS IMMEDIATELY PRIOR TO THE DATE OF COUNTY'S FIRST CLAIM, EXCEPT AS MAY OTHERWISE BE REQUIRED BY APPLICABLE LAW. (C) NOTWITHSTANDING ANYTHING IN SUBSECTIONS (A) OR (B) ABOVE OR ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR BE LIABLE TO COUNTY OR ANY OTHER PERSON, WHETHER IN CONTRACT OR IN TORT, OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) FOR LOSS, DAMAGE OR DESTRUCTION OF ANY INFORMATION OR DATA CONTAINED IN ANY COUNTY MATERIALS, FOR THE COST OF RECREATING SUCH INFORMATION, FOR LOST PROFITS OR REVENUES, LOSS OF USE OR SIMILAR ECONOMIC LOSS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SERVICES PROVIDED BY CONTRACTOR, OR FOR ANY CLAIM MADE AGAINST COUNTY BY ANY OTHER PERSON, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM.

20.2 EXCEPTION: THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 20.1 SHALL NOT APPLY TO THIRD PARTY CLAIMS FOR WHICH THE CONTRACTOR OWES A DUTY OF INDEMNITY FOR INJURY OR DEATH TO PERSONS OR DAMAGE TO PROPERTY. IN SUCH CASES, CONTRACTOR'S LIABILITY SHALL BE LIMITED TO THE POLICY LIMITS SET FORTH IN ITS GENERAL LIABILITY POLICY.

20.3 Any claim by County for missing or damaged County Materials must be made in writing to Contractor within sixty (60) days after delivery to County. No other action, regardless of form, arising out of or in connection with this Agreement (other than an action by Contractor for any amount due to Contractor) may be brought more than one (1) year after the cause of action has arisen.

20.4 Contractor shall not be liable for any default or delay in the performance of any of its obligations under this Agreement or for the damage or destruction of any County Materials if caused, directly or indirectly, by acts of God; labor disputes, strikes or lockouts; wars, acts of terrorism, riots or civil disorder; decisions or requirements, whether valid, invalid, formal or informal, of any government, beyond Contractor's reasonable control.

21. Notice. Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered to the following address and individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE COUNTY:

Ira Levy, Director
Department of Technology & Communication Services
Ascend Building, 2nd Floor
8930 Stanford Boulevard
Columbia, MD 21045
(410) 313-3500
(410) 313-3291 (fax)
ilevy@howardcountymd.gov

and

Phyllis Pritchett, Records Manager
Records Management Division
9250 Bendix Road
Columbia, MD 21045
(410) 313-6195
(410) 313-6196 (fax)
ppritchett@howardcountymd.gov

and

Helen M. Ashley, CPPB, Senior Buyer
Howard County Office of Purchasing
Gateway Building, 5th Floor, Suite 501
6751 Columbia Gateway Drive
Columbia, MD 21046
(410) 313-6378
(410) 313-6388 (fax)
hashley@howardcountymd.gov

FOR THE CONTRACTOR:

H. Alan Rosenberg, Esq. & CIPP
General Counsel & Senior Director, Americas
Recall Corporation
One Contractor Center
180 Technology Parkway
Norcross, GA 30092
Direct: (770) 776-1554
Fax: (770) 689-5539
Email: alan.rosenberg@recall.com

and

David Cox, Government Specialist
Recall Total Document Management, Inc.
1780-B Crossroads Drive
Odenton, MD 21113
410-562-3138
410-519-5938 (fax)
david.cox@recall.com

22. HIPAA. Compliance With Federal HIPAA And State Confidentiality Law.

22.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320 *et seq.* and implementing regulations including 45 CFR Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 *et seq.*, MCMRA). This obligation includes:

22.1.1 As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal HIPAA requirements; and

22.1.2 Providing good management practices regarding all health information and medical records.

22.2 The County has determined that functions to be performed under this Agreement constitute business associate functions as defined in HIPAA. Therefore, pursuant to mandated compliance with the HIPAA, the Contractor is required to enter into a Business Associate Agreement as required by HIPAA regulations at 45 CFR §164.501, as set forth in Attachment C, attached hereto and incorporated herein.

22.3 Protected Health Information as defined in the HIPAA regulations at 45 CFR 160.103 and 164.501, as amended from time to time, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

23. No Waiver, Etc.

No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude such party from exercising any such right, power, or remedy at any later time or times.

23. Subpoena of Materials. Notwithstanding anything in Section 9 or any other provision of this Agreement, if any County Confidential Information is subpoenaed pursuant to an order of any court, or any other order, judgment or decree is made or entered by any court or governmental agency affecting such Confidential Information or any part thereof (collectively an “Order”), Contractor is expressly authorized to obey and comply with the Order, without the necessity of inquiring whether such court or agency had jurisdiction or inquiring into any other matter affecting the validity of the Order. Contractor shall not be liable to County or any third party by reason of compliance with any Order, notwithstanding that the Order may subsequently be reversed, modified or vacated. Notwithstanding the above, Contractor shall, prior to disclosing any information, use all reasonable efforts to provide County with prompt written notice of the receipt of any Order to allow County an opportunity to protect its interest.

Signature page follows.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

**RECALL TOTAL DOCUMENT
MANAGEMENT, INC.
RECALL SECURE DESTRUCTION
SERVICES, INC.
SUBSIDIARIES OF RECALL
CORPORATION**

WITNESS:

Signature

Print Name

WITNESS:

Signature

Print Name

WITNESS:

HOWARD COUNTY, MARYLAND, a body
corporate and politic

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Ken Ulman
County Executive

APPROVED FOR LEGAL SUFFICIENCY
this _____ day of _____, 2011:

Margaret Ann Nolan
County Solicitor

APPROVED FOR SUFFICIENCY OF FUNDS:

DEPARTMENT APPROVED:

Stanley J. Milesky
Director of Finance

Ira Levy
Chief Information Officer
Technology and Communication Services

ATTACHMENT A

SERVICES TO BE PERFORMED

Document Management Services (DMS)

The Contractor agrees to provide to County certain pickup, transport, storage and delivery services (“DMS Services”) for records, documents and similar hard copy items provided to Contractor by County for storage (“DMS Materials”). More specifically, Contractor will furnish offsite records management and shredding services for 9,000 to 9,500 boxes of records. The records will have to be removed from the current location and relocated to the Contractor’s offsite storage warehouse. These boxes are a mixture of 1.2 and 2.4 cubic feet. There are between 450 and 500 permanent records in 2.4 cubic feet boxes. Other records with a definite retention deadline are to remain in the current 2.4 cubic feet boxes until their retention period expires; then they will be destroyed.

Storage and Access Control. DMS Materials may be deposited at such facilities, located in Howard County, Maryland, as Contractor shall determine. County will provide Contractor with a list of County’s personnel authorized to receive DMS Materials and other services under this Agreement (“DMS Authorized Users”), by executing Contractor’s standard authorization form (the “DMS Authorization List”). The DMS Authorization List may be amended by County from time to time only in writing, and Contractor is authorized to rely on the most recent Authorization List provided by County. Authorized Users will have access to DMS Materials via (a) a written request specifying the materials to be delivered to County and the requested delivery date, or (b) when available, through Contractor’s Internet web site. Any use of Contractor’s web site will be subject to the terms and conditions contained therein. Any changes to County’s locations and service schedules must be communicated in writing to Contractor, in order to be effective. Any containers provided by Contractor for the transport or storage of DMS Materials are provided by Contractor as a service and shall at all times be the sole property of Contractor.

Restriction on Stored Materials. County represents that it is the owner or legal custodian and has the lawful right to possess and transfer all of the DMS Materials provided to Contractor. County represents and warrants that the DMS Materials will not include or contain any (a) highly flammable, explosive, toxic materials, or any illegal, hazardous, dangerous or unsafe materials, (b) memorabilia or collectibles, (c) materials having historical value (such as fossils or historical manuscripts, journals or photographs), (d) artwork, (e) any negotiable instruments, currency, negotiable or uncanceled stocks or bonds, jewelry, or (f) other items that have intrinsic market value. Contractor reserves the right to open and inspect any cartons or containers of DMS Materials tendered for storage and refuse acceptance of any DMS Materials which fail to comply with Contractor’s storage restrictions and guidelines. Contractor may refuse any materials stored in unusual or non-standard containers.

Data Protection Services (DPS)

The Contractor agrees to provide to County certain pickup, transport, storage and delivery services (“DPS Services”) for records, documents and similar hard copy items provided to Contractor by County for storage (“DPS Materials”).

Storage and Access Control. DPS Materials may be deposited at such facilities, located in Howard County, Maryland, as Contractor shall determine. County will provide Contractor with a list of County’s personnel authorized to receive DPS Materials and other services under this Agreement (“DPS Authorized Users”), by executing Contractor’s standard authorization form (the “DPS Authorization List”). The DPS Authorization List may be amended by County from time to time

only in writing, and Contractor is authorized to rely on the most recent Authorization List provided by County. Authorized Users will have access to DPS Materials via (a) a written request specifying the materials to be delivered to County and the requested delivery date, or (b) when available, through Contractor's Internet web site. Any use of Contractor's web site will be subject to the terms and conditions contained therein. Any changes to County's locations and service schedules must be communicated in writing to Contractor, in order to be effective. Any containers provided by Contractor for the transport or storage of DPS Materials are provided by Contractor as a service and shall at all times be the sole property of Contractor.

Restriction on Stored Materials. County represents that it is the owner or legal custodian and has the lawful right to possess and transfer all of the DPS Materials provided to Contractor. County represents and warrants that the DPS Materials will not include or contain any (a) highly flammable, explosive, toxic materials, or any illegal, hazardous, dangerous or unsafe materials, (b) memorabilia or collectibles, (c) materials having historical value (such as fossils or historical manuscripts, journals or photographs), (d) artwork, (e) any negotiable instruments, currency, negotiable or uncanceled stocks or bonds, jewelry, or (f) other items that have intrinsic market value. Contractor reserves the right to open and inspect any cartons or containers of DPS Materials tendered for storage and refuse acceptance of any DPS Materials which fail to comply with Contractor's storage restrictions and guidelines. Contractor may refuse any materials stored in unusual or non-standard containers.

Secure Destruction Services (SDS)

The Contractor agrees to provide to County certain secure destruction services ("SDS Services") with respect to records, documents and media items provided to Contractor by County for destruction ("SDS Materials").

Services Description. Contractor agrees to: (a) furnish containers to County at the locations specified below, to be used exclusively for the deposit of the SDS Materials, and (b) collect the SDS Materials from the containers in material accord with Contractor's schedules, which may be modified from time to time upon written notice to County and (c) cause the SDS Materials to be destroyed by shredding equipment so as to render the contents unreadable. Contractor shall provide a Certificate of Destruction along with County's invoice

Containers and Materials: Contractor shall at all times retain title to and all rights of possession of the containers provided by Contractor. Contractor's containers shall not be used by County for the disposal of other types of materials unless approved by Contractor in writing prior to collection. In no event shall Contractor's containers be used for the disposal of any hazardous or toxic materials, or metals, solids, or other materials that could damage or contaminate Contractor's containers, vehicles or equipment, or cause injury or death to any of its employees or agents. Contractor may remove the containers, along with any County Materials contained therein, upon any termination or expiration of this Agreement. Contractor shall have title to and all rights of possession to the County Materials following its destruction, including, without limitation, the right to recycle such material. County shall (a) maintain Contractor's containers in a secure location that is readily and safely accessible to Contractor personnel and equipment and (b) exercise reasonable care to avoid theft, vandalism or other damage or loss to the containers. In no event shall Contractor be responsible or liable to County for any theft of County Materials from the containers which are on County's premises. County shall reimburse Contractor the cost to repair or replace any of Contractor's containers that are lost, stolen, or damaged. After delivery of the containers to County, County shall be responsible for safekeeping the keys to Contractor's containers. If the keys are lost or not returned with the containers, County shall pay Contractor's then-current replacement fee not to exceed \$5.00 for each key that is lost or not returned.

“Services” shall mean the DMS Services and/or SDS Services that the parties agree Contractor is to provide for County hereunder. “County Materials” shall mean the DMS Materials and/or SDS Materials for which Contractor is providing Services to County hereunder. Each Service shall be provided in material accord with Contractor’s standard operating procedures applicable thereto, as modified in Contractor’s sole discretion from time to time.

Contractor shall pick-up and deliver County Materials at the County location(s) specified, in accordance with Contractor’s schedules specified on each Exhibit, as modified from time to time upon notice to the County. Contractor shall use all commercially reasonable efforts to provide deliveries and pick-up services within the time periods specified in this Agreement.

The above are in addition to any other services set forth in the Proposal.

ATTACHMENT B

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "human Rights" of Title 12 of the Howard County Code Section 24 of Article 49B of the Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the county purchasing agent.

(4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Code Section 22.204. Prohibited Conduct and Interests.

(a) **Participation Prohibitions:** County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) **Employment Prohibitions:** Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(i) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within one (1) year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) **Solicitation/Acceptance of Gifts or Compensation:** No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) **Use of Prestige of Office:** No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) **Disclosure of Confidential Information:** Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.

ATTACHMENT C

BUSINESS ASSOCIATE AGREEMENT

I. PURPOSE AND SCOPE

A. The County and the Contractor enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and its implementing regulations (45 CFR Parts 160 and 164) as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as 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 the Maryland Confidentiality of Medical Records Act (MCMRA).

B. This Agreement applies to the conduct of the Contractor in connection with protected health information anticipated to be provided to, collected, maintained or used by the Contractor in connection with its performance under the Primary Contract.

II. DEFINITIONS

A. The terms used in this Agreement have the meanings set forth in the Privacy Rule, 45 CFR Parts 160 and 164, and as set forth in subsection B of this section.

B. As used in this Agreement the following terms have the meanings indicated:

1. "County" means Howard County, Maryland.

2. "Designated Record Set" means a group of records maintained by or for the County that is (i) the medical records and billing records about individuals maintained by or for the County, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (iii) used, in whole or in part, by or for the County to make decisions about individuals. As used in this Agreement, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for the County. (45 CFR §164.501.)

3. "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information. (45 CFR §160.103.)

4. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (the Social Security Act, 42 U.S.C. 1320a-7(c)(a)(5), and 1320d-2 and 1320d-4.)

5. "Individual" has the same meaning as the term "individual" in 45 CFR § 160.103 and includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

6. "MCMRA" means the Maryland Confidentiality of Medical Records Act, Md. Code Ann., Health-Gen., §4-301, et seq.

7. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

8. "Protected health information" as defined in the Privacy Rule §§ 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer. For purposes of this Agreement, protected health information is limited to the information created or received by the Contractor from or on behalf of the County.

9. "Required by law" means a mandate contained in law that compels an entity to make use or disclosure of protected health information, that is enforceable in a court of law, and includes but is not limited to the itemized activities set forth in 45 CFR §164.501.

10. "Use" means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information. (45 CFR § 164.50 1.)

III. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

A. The Contractor agrees to use or disclose protected health information only as permitted or required by the Privacy Rule, this Agreement, or as otherwise required by law.

B. Except as otherwise provided in this Agreement, the Contractor may:

1. Use or disclose protected health information to perform functions, activities, or services for, or on behalf of, the County as specified in the Primary Contract, provided that the use or disclosure would comply with the Privacy Rule if done by the County, is consistent with the MCMRA, if applicable.

2. Use protected health information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor;

3. Disclose protected health information to a third party as necessary to carry out its obligations under the Primary Contract, for proper management and administration of the Contractor or to carry out the Contractor's legal responsibilities if:

a. the disclosure is required by law;

b. the Contractor obtains reasonable assurances from the third party to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and

c. the third party notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached; and

4. Use protected health information to provide data aggregation services to the County as permitted by 45 CFR § 164.504(e)(2)(i)(B).

C. The Contractor may use protected health information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(a)(1).

IV. CONTRACTOR REQUIREMENTS

A. The Contractor agrees to implement appropriate safeguards to prevent use or disclosure of the protected health information other than as provided in Section III of this Agreement, including:

1. Limiting the amount of protected health information used or disclosed pursuant to Section III of this Agreement to the minimum necessary to carrying out the functions of the Primary Contract and to otherwise achieve the purposes of the use and disclosure;

2. Taking steps to protect the physical security of and prevent unauthorized access to the protected health information, and allowing representatives of the County access to premises upon reasonable advance notice during normal business hours where the protected health information is maintained for the purpose of inspecting the physical security arrangements; and

3. Requiring each of its employees having involvement with protected health information to comply with applicable laws and regulations relating to confidentiality of protected health information, including the provisions of this Agreement and the Maryland Confidentiality of Medical Records Act.

B. The Contractor agrees to:

1. Mitigate, to the extent practicable, any harmful effect that is known to Contractor, of a use or disclosure of protected health information by Contractor in violation of the requirements of this Agreement;

2. Report to the County any use or disclosure of the protected health information not consistent with this Agreement of which it becomes aware within five (5) days of the time it becomes aware of the use of disclosure;

3. Ensure that any agent, including a subcontractor, **agrees to the same restrictions [OPEN]** and conditions that apply to the Contractor with respect to any protected health information provided to the agent that is received from, or created or received by Contractor on behalf of the County;

4. Provide access, at the request of the County, and in the time and manner directed by the County, to protected health information in a designated record set maintained by the Contractor, to the County or, as directed by the County, to an individual in order to meet the requirements under 45 CFR § 164.524;

5. Make any amendment(s) to protected health information in a designated record set maintained by the Contractor that the County directs or agrees to pursuant to 45 CFR §164.526 at the request of the County or an individual, and in the time and manner directed by the County;

6. Make available to the County, in a time and manner directed by the County or designated by it, any protected health information received from, or created or received by Contractor on behalf of the County, as well as any internal practices, books, and other records relating to the use and disclosure of protected health information, for purposes of determining the County's compliance with the Privacy Rule;

7. Document disclosures of protected health information and information related to such disclosures as would be required for the County to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR § 164.528; and

8. Provide to the County or an individual, in time and manner directed by the County, information collected in accordance with subsection (7) of this section, to permit the County to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR § 164.528.

C. Upon termination of the Primary Contract, the Contractor agrees that, except as provided in subsection V(C) of this Agreement, all of the protected health information provided by the County to the Contractor, or created or received by the Contractor on behalf of the County pursuant to the Primary Contract will be destroyed or returned to the County.

V. TERM AND TERMINATION

A. This Agreement shall be effective when executed by the County. It shall remain in effect unless otherwise terminated for the entire term of the Primary Contract including any extensions, options or modifications, or, as appropriate, in accordance with the requirements of paragraph (C) of this subsection.

B. Upon the County's knowledge of a material breach by Contractor, the County will either:

1. Provide an opportunity for the Contractor to cure the breach or end the violation and terminate this Agreement for cause if the Contractor does not cure the breach or end the violation within the time specified by the County;

2. Immediately terminate this Agreement for cause if the Contractor has breached a material term of this Agreement and cure is not possible; or

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

C. Effect of Termination of this Agreement.

1. Except as provided in paragraph 2 of this section, upon termination of this Agreement for any reason, the Contractor shall return or document the destruction of all protected health information received from the County, or created or received by the Contractor on behalf of the County. This provision shall apply to protected health information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall retain no copies of the protected health information.

2. If the Contractor believes that returning or destroying the protected health information is infeasible, the Contractor shall provide to the County notification of the conditions that make return or destruction unfeasible. If the County agrees that return or destruction of protected health information is unfeasible, the Contractor shall extend the protections of this Agreement to the protected health information and limit further uses and disclosures of the protected health information to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains the protected health information.

D. The County's termination of this Agreement for cause pursuant to this subsection V may be viewed by the County as a breach of the Primary Contract and grounds for termination in accordance with the default termination clause of the Primary Contract.

VI. MISCELLANEOUS

A. A reference in this Agreement to a section in the Privacy Rule means the section in effect at time of execution and as amended from time to time thereafter.

B. The parties agree to take such action to amend this Agreement from time to time as is necessary for the County to comply with the requirements of the Privacy Rule and HIPAA.

C. The respective rights and obligations of the Contractor under Section V(C) of this Agreement shall survive the termination of this Agreement.

D. Any ambiguity in this Agreement shall be resolved to permit the County to comply with the Privacy Rule.

E. The parties agree that this Agreement shall not be assignable, except by written approval, in advance, by the County.

VII. COMPLIANCE WITH STATE LAW

The Contractor acknowledges that by accepting the protected health information from the County, it becomes a holder of medical records information under the Maryland Confidentiality of Medical Records Act (Md. Code Ann., Health-Gen. §§4-301 et. seq.) and is subject to the provisions of that law. If the HIPAA Privacy Rule and the MCMRA conflict regarding the degree of protection provided for protected health information, the Contractor shall comply with the more restrictive protection requirement.