

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
SUITE 500, 2100 CLARENDON BOULEVARD
ARLINGTON, VA 22201

AGREEMENT NO. 17-183-SS

THIS AGREEMENT is made, on the date of execution by the County, between Arlington VOA ALR Operating Inc., 2000 5TH Street S Arlington, Virginia, 22204 (“Contractor”), a Minnesota corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The “Contract Documents” consist of:

- This Agreement
- Attachment A – Scope of Work
- Attachment B – Contract Pricing
- Attachment C – Business Associate Agreement
- Attachment D – County Nondisclosure and Data Security Agreement (Contractor)
- EXHIBIT A – Philosophy for Operation of the Facility
- EXHIBIT B – Reportable Incidents
- EXHIBIT C – Reporting Requirements
- EXHIBIT D – Monthly Client Invoice Detail Format
- EXHIBIT E – Mary Marshall Assisted Living Residence Organizational Chart

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties’ agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the “Contract” or the “Agreement”.

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the “Work”). As detailed in the “Scope of Work” (Attachment A), the primary purpose of the Work is to operate an assisted living facility. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than June 30, 2022 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than five additional 12-month periods, from, 2022 to 2027 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Attachment B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

This is a cost-reimbursement contract. The Contractor will be paid the unit prices shown in the Contract Documents, up to a maximum of \$2,533,752.00. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Attachment A unless those additional goods or services are covered by a fully executed amendment to this Contract. Any additional services will be billed at the rates agreed upon by the parties in writing.

6. CONTRACT PRICE ADJUSTMENTS

The Contract Amount/unit price(s) will remain firm until June 30, 2017 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 60 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12-month period ending in April 30th of each year of the Contract.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may terminate the Contract, whether or not the County has previously elected to extend the Contract's term.

7. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. The County will pay the Contractor within 30 days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

8. REIMBURSABLE EXPENSES

The County will not reimburse the Contractor for any expenses under this Contract. The amount in Attachment B includes all costs and expenses of providing the services described in this Contract.

9. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

10. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

11. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

12. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

13. BACKGROUND CHECK

All employees or whom the Contractor assigns to work on this Contract must pass the County's standard background check. For those employees who are assigned to work at the Mary Marshall Assisted Living Residence with direct client contact, the background check will include fingerprinting by the County Sheriff's Office.

14. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may only replace key personnel or subcontractors identified in its proposal per the process in Attachment A "Scope of Work" Item 4 "Program Services: Operations and Standards", Section L "Personnel".

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's approval.

15. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

16. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

17. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

18. SAFETY

The Contractor must ensure that it and its employees and subcontractors comply with all applicable local, state and federal policies, regulations and standards relating to safety and health, including the standards of the Virginia Occupational Safety and Health program of the Department of Labor and Industry for General Industry and for the Construction Industry and the applicable Federal Environmental Protection Agency and Virginia Department of Environmental Quality standards.

19. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. Upon such termination, the Contractor may apply for

compensation for Contract services that the County previously accepted (“Termination Costs”), unless payment is otherwise barred by the Contract. The Contractor must submit any request for Termination Costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for Termination Costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County’s recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days’ notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to Termination Costs, as defined above, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

20. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the “County Indemnitees”) from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys’ fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor’s acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance

of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

21. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

22. DATA SECURITY AND PROTECTION

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- A. **County's Non-Disclosure and Data Security Agreement.** The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Attachment D) before performing any work or obtaining or permitting access to County networked resources, application systems or

databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.

- B. **Use of Data.** The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.
- C. **Data Protection.** The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- D. **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.
- E. **Conclusion of Contract.** Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.
- F. **Notification of Security Incidents.** The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.
- G. **Subcontractors.** If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each

subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

23. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

24. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

25. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

26. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

27. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

28. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

29. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers
- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

30. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

31. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

32. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

33. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

34. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

35. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

36. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

37. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

38. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

39. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

40. ATTORNEY'S FEES

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

41. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; DATA SECURITY AND PROTECTION; RELATION TO COUNTY; AND AUDIT.

42. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

43. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

44. NOTICES

Unless otherwise provided in writing, all written notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:
Arlington VOA, ALR Operating, Inc.
Attn: Administrator

2000 5th St. South
Arlington, VA 22204

TO THE COUNTY:

Harry Ayling, Project Officer
Aging and Disability Services
Department of Human Services
2100 Washington Boulevard, 4th Floor
Arlington, VA 22204

AND

Vanessa Moorehead, Procurement Officer
Arlington County, Virginia – Purchasing Department
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201

45. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

46. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

47. HIPAA COMPLIANCE

The Contractor must comply with the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor is designated a Business Associate for purposes of this Contract and must execute the attached Arlington County Business Associate Agreement (Attachment C). Pursuant to 45 C.F.R. § 164.308(b)(1) and the Health Information Technology for Economic and Clinic Health Act ("HITECH"), § 13401, the Contractor must also enter into an agreement with any subcontractors that, in a form approved by the County, requires the subcontractor to protect PHI to the same extent as the Arlington County Business Associate Agreement. The Contractor must ensure that its subcontractors notify the Contractor immediately of any breaches in security regarding PHI. Software and platforms used in performance of this Contract must be HIPAA compliant.

The Contractor takes full responsibility for HIPAA compliance, for any failure to execute the appropriate agreements with its subcontractors and for any failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH. The Contractor will indemnify the County for any and all losses, fines, damages, liability, exposure or costs that arise from any failure to comply with this paragraph.

48. ADA COMPLIANCE

The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance. The Contractor also must respond promptly to and cooperate fully with all inquiries from the U.S. Department of Labor.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- A. Access to Programs, Services and Facilities: The Contractor must ensure that its programs, services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor must provide equivalent services in an accessible alternate location or manner.
- B. Effective Communication: Upon request, the Contractor, must provide appropriate communication aids and services so that qualified persons with disabilities can participate equally in the Contractor's programs, services and activities. Communication aids and services can include, but are not limited to, qualified sign language interpreters, Braille documents and other means of facilitating communications with people who have speech, hearing or vision impairments.
- C. Modifications to Policies and Procedures: The Contractor must modify its policies and procedures as necessary to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, services and activities. For example, individuals' service animals must be allowed in the Contractor's offices or facilities, even if pets are generally prohibited.
- D. No Extra Charges: The Contractor may not charge a person with a disability or any group of individuals with disabilities to cover the cost of providing aids or services or of reasonable modifications to policies and procedures.

49. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- A. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- B. Commercial General Liability - \$3,000,000 per occurrence, with \$10,000,000 general aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- C. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- D. Professional Liability - \$1,000,000 per occurrence/claim, \$2,000,000 annual aggregate.
- E. Umbrella Liability - \$5,000,000 combined single limit.
- F. ADDITIONAL Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and

automotive and professional liability; and the additional insured endorsement must be typed on the certificate.

- G. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- H. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
- I. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

ARLINGTON VOA, ALR OPERATING, INC.

AUTHORIZED
SIGNATURE: _____

AUTHORIZED
SIGNATURE: _____

NAME: MICHAEL E. BEVIS
TITLE: PURCHASING AGENT

NAME: WAYNE OLSEN
TITLE: EXECUTIVE VP OF HEALTHCARE OPERATIONS

DATE: _____

DATE: _____

Mary Marshall Assisted Living Residence
ATTACHMENT A
SCOPE OF WORK

1. GENERAL PROJECT DESCRIPTION

The Contractor shall operate and manage the Mary Marshall Assisted Living Residence at 2000 S. 5th Street, Arlington, Virginia, in compliance with the Virginia Department of Social Services Standards for Licensed Assisted Living Facilities (“VA ALF Standards”) and Arlington County standards and requirements. Please see *Standards for Licensed Assisted Living Facilities* (effective 07/2013), found at <http://www.dss.virginia.gov/facility/alf.cgi> under the “Regulations, Technical Assistance and Code References” header.

The Mary Marshall Assisted Living Residence provides comprehensive, person-centered assisted living services for up to 52 persons with serious mental illness and/or developmental disabilities. The Contractor shall provide these services on 24 hours/7 days per week basis and tailor the services to meet the scheduled and unscheduled needs of the residents.

The Mary Marshall Assisted Living Residence “MMALR” shall be maintained to assure that it is a safe and sanitary residence that provides a comfortable and homey atmosphere for residents. To ensure the safety of residents, staff, and volunteers, the Contractor shall develop and maintain comprehensive and operable safety and emergency protocols for the MMALR.

2. CONTRACTOR SHALL COOPERATE WITH THE COUNTY PROJECT OFFICER AND DHS CASE MANAGERS

DHS shall designate a Project Officer (Senior Adult Mental Health Program Manager) to serve as the primary contact with the Contractor.

- A. The Contractor understands and agrees that the Project Officer will conduct routine quality assurance and compliance reviews. The Contractor shall provide the Project Officer with necessary access to staff, files and reports necessary to complete the reviews.
- B. The Contractor shall provide information to its staff, via an orientation or on a consultation basis as needed, about services and programs available to the MMALR residents from DHS. The County Project Officer or his or her designee will work with the Contractor to assist with providing such program and service information to staff.
- C. The Contractor understands and agrees that the Project Officer or his or her designee will conduct routine contract review meetings with the Contractor and that such reviews may include but not be limited to the following.
 1. Review of budget
 2. Review of achievement of performance standards
 3. Review of any proposed facility and/or program changes
 4. Discussion of any issues raised by residents, the DHS or Social Services Licensing Division, and/or the County Advisory Committee

5. Discussion of any contract or compliance issues
 6. Any other issues deemed appropriate to ensure compliance with this Agreement
- D. The Contractor understands and agrees that each resident of MMALR will have a case manager employed by DHS. The Contractor shall cooperate with each assigned DHS case manager in carrying out his/her duties, which may include:
1. Participating in the development of the resident's Individual Service Plan (ISP)
 2. Participating in resident progress review meetings held by the Contractor.

3. GENERAL OPERATIONAL REQUIREMENTS OF THE CONTRACTOR

The Contractor shall provide assisted living services in a manner that meets the philosophy for the operation of the facility goals, as outlined in Attachment A to this Scope of Work and the general requirements enumerated below. Nothing in the Contract shall be construed to limit the Contractor's responsibility to manage the details or execution of the work performed.

- A. The Contractor shall provide services 365 days a year, 24 hours per day.
- B. The Contractor shall establish an internal 24-hour fire and medical emergency response system, subject to review and approval of the County Project Officer.
- C. The Contractor shall establish eligibility criteria that at a minimum shall include:
 1. Applicant is 55 years of age or older
 2. Applicant meets ALF criteria
 3. Applicant is continent or able to manage own incontinence needs with minimal assistance from staff
 4. Applicant requires assistance with medications
 5. Diagnosis of serious mental illness and/or developmental disabilities
- D. The Contractor shall establish an admission preference for applicants who live in Arlington County and have a DHS Case Manager or DHS Therapist.
- E. The Contractor may be requested to submit a marketing plan for review by the County Project Officer. The purpose of the marketing plan is to identify Arlington residents who may not be known to DHS and who are qualified for admission to the residence.
- F. The Contractor shall maintain an Admissions Review Team that includes DHS staff and staff of the Contractor to review and approve applications for admission to the facility.
 1. The Contractor shall select from referrals made by the County. The Contractor may also consider and select from third-party referrals and from individuals known to the

Contractor through the marketing plan if these individuals have been approved by the DHS Referral Committee

2. The Admissions Review Team shall have an established meeting schedule with policies and procedures to process applications in a timely manner
 3. The Contractor shall hold final approval of the admission of new residents to the MMALR. The Project Officer shall hold final approval of all resident discharges from the MMALR
 4. The Contractor shall thereafter maintain a pool of qualified applicants who shall be available when vacancies occur after initial occupancy. The pool shall be updated monthly and verified with the Project Officer
- G. The Contractor shall maintain a Resident Retention Review Team, comprised of DHS staff and staff of the Contractor, the composition of which is subject to the approval of the Project Officer. At a minimum this team must include Director of Nursing, Director of Resident Services, a representative of the Aging and Disability Services Division and a representative of the Behavioral Healthcare Division. This Team will monitor the health and well-being of residents on a routine basis. The Contractor shall establish a protocol and meeting schedule for the Resident Retention Review Team, which protocol will be subject to the annual approval of the Project Officer.

The Resident Retention Review Team will also function as the Discharge Review Team and in this capacity, will review and approve the plans of residents whom the Contractor or DHS recommend for discharge or who wish to move out. The Contractor shall demonstrate that all other options to continue to provide services to the resident have been exhausted before proposing discharge. Residents will not be discharged, unless they have elected to move out, until the level of care exceeds that of the abilities and skills that the MMALR staff can provide.

The process for reviewing a proposed discharge is as follows:

1. The Contractor shall prepare documentation supporting the proposed discharge, which must include, at a minimum, a final evaluation of the client's progress toward goals in the resident's service plans. The Contractor shall also prepare a plan developed with the resident and DHS Case Manager regarding the resident's plan for housing and continuing service needs outside of MMALR. This documentation shall be presented to the Discharge Review Team in a meeting called by the Contractor.
2. If the Discharge Review Team reviews and approves a proposed discharge, the Contractor shall submit to the Project Officer a letter of request for discharge ("Approval Letter") within 30 days of the Discharge Review Team's decision. Discharge request letters are required when the Contractor wishes to discharge a resident (i.e. not required for resident deaths) or there has been a determination that the resident needs to be transferred to a higher level of care (such as a nursing home). This Project Officer shall provide template for discharge request letter.

3. If the Discharge Review Team does not reach consensus on a discharge decision, the Contractor must consult with the Project Officer within one business day. The Project Officer, in association with the Division Chief for Aging and Disability Services, will have the final say in all discharge decisions.
- H. The Contractor shall give appropriate County personnel, as determined by the Project Officer, access to the residence, residents, records, materials, and all the data created as a result of this Agreement, consistent with the established local, state and federal regulations and as may be needed by the County to monitor compliance with this Agreement.
 - I. The Contractor shall inform the Project Officer of any material changes in the operation of the facility that may affect the physical safety and well-being of residents, including by way of example and not limitation, loss of heat or air conditioning, infestation of rodents or insects, flooding or loss of water, etc.
 - J. The Contractor shall inform the Project Officer of any changes in funding received for operations.
 - K. The Contractor shall provide the Project Officer with a plan for the identification and evaluation, regular monitoring, and reduction or elimination of risks that may contribute to an unsafe environment. This plan is subject to the approval of the Project Officer.
 - L. The Contractor shall use a person-centered planning approach to providing assisted living services. The Contractor shall encourage all residents to participate in their planning meetings and to provide feedback regarding their service providers, which the Contractor shall seriously consider.

The Contractor shall use an Individual Service Plan (ISP) that is approved by the Project Officer or his or her designee. The Contractor shall include in the ISP a detailed health care component that promotes the highest level of health and nutrition, enumerates a medication management plan, assists with aging in place as necessary, increases and maintains an individual's independence, and promotes integration into the MMALR community and the broader Arlington community.

1. The Contractor shall ensure that all residents have an ISP in place prior to moving in to the residence. The ISP shall be updated according to Virginia Department of Social Services (VDSS) guidelines. The Contractor shall provide the initial ISP and quarterly reports to the resident, the DHS Case Manager, and the Project Manager or his or her designee within 10 days of development of the report.
2. The Contractor shall notify the Project Officer and the DHS Case Manager within 24 hours of any new conditions that are placed in an ISP in response to new concerns.
3. The Contractor shall ensure that the DHS Case Manager is provided a copy of the ISP in order for the DHS Case Manager to coordinate service providers.

4. The DHS Case Manager shall participate in an annual planning meeting to include all service providers working with the resident as arranged by the Contractor.

M. If a resident must leave MMALR for therapeutic reasons (e.g. to go to a hospital or rehabilitation facility) for longer than 14 days, the Contractor must call a care coordination meeting between clinical Contractor staff and the DHS Case Manager no later than the 14th day of the absence to determine if the resident will be able to return to MMALR. The maximum combined days absent is not to exceed forty-five (45) days. The definition of an occupancy day is included in Paragraph P. The Contractor's staff shall actively collaborate with the facility where the resident is located (e.g. a hospital or rehabilitation facility) on discharge from that facility and assist with the resident's return to MMALR.

1. If it is determined that the resident will be unable to return to MMALR by the end of 45 consecutive days, then the County reserves the right to revoke all associated funding after the 45th day. The County Project Officer will be responsible for making this determination and will work in coordination with the Contractor. In the event of such a determination, the Contractor will notify the resident (and those legally authorized to make decisions on the resident's behalf) that associated funding is to be terminated and that the resident will be discharged.
2. If a client receiving any outside support (Auxiliary Grant, Housing Choice Voucher, and/or identified third-party sources of support) leaves the facility for any reason (including for a short stay at a hospital) it is Contractor's responsibility to determine how long the client's outside funding will last.
3. If the resident intends to return to MMALR and has medical clearance to do so at some future time after the 45-day bed hold period is exhausted, then the resident (or other responsible financial party) has the option to continue to pay the full pro-rated, capitated cost on behalf of the individual after the County ceases funding and until that individual returns to MMALR. The resident then may re-apply for all applicable funding sources upon return to MMALR. If approved, then all applicable funding sources will be reinstated for the resident at the first of the following month. No retroactive payments for costs incurred during the bed hold will be charged to the County.
4. If the resident is not going to return to MMALR after the 45th day of absence and the Contractor has given the required notice, then the Contractor will initiate the vacancies protocol (detailed below) for the vacant room. County financial liability will not resume until the room is occupied by a new resident.
5. Residents are encouraged to take personal non-therapeutic leave as directed by their care plans.
6. If a resident has more than 15 days in a calendar year (starting from the date of admission to MMALR) wherein their bed is held while they are absent from MMALR for non-therapeutic leave (e.g. on vacation or staying with family), apart from leave that is included in the resident's care plan, then the County reserves the right to

revoke all associated funding after the 15th day is exhausted. The definition of an occupancy day is included in Paragraph P.

After the 15th day, the Contractor will notify the County and the resident (and those legally authorized to make decisions on the resident's behalf) that associated funding is to be terminated. At that time, the County may cease having financial responsibility associated with that resident.

7. If the resident intends to return to MMALR at some future time after the 15-day bed hold period is exhausted, then the resident (or other responsible financial party) has the option to continue to pay the full pro-rated, capitated cost on behalf of the individual after the County ceases funding and until that individual returns to MMALR. The resident then may re-apply for all applicable funding sources upon return to MMALR. If approved, then all applicable funding sources will be reinstated for the resident at the first of the following month. No retroactive payments for costs incurred during the bed hold will be charged to the County.
 8. If the resident is not going to return to MMALR after the 15th day after notice is given by the Contractor, then the Contractor shall initiate the vacancies protocol for the vacant room. County financial liability will not resume until the room is occupied by a new resident.
- N. Occupancy Day: For purposes of determining the MMALR census and the length of time a person is absent from MMALR for therapeutic or non-therapeutic leave, a person is counted as being present if they are in the building when a formal count is taken by Contractor's staff at or about 1:00 A.M. each night.
- O. The Contractor will fill all facility vacancies using a list of potential clients provided by the County Project Officer. If there is no one on the referral list, the County will have five business days after notice from the Contractor to provide a list of approved, eligible clients to the Contractor. The Contractor will then have five business days to identify an appropriate client from the list and admit the client. The County's Project Officer and the Contractor will negotiate based on each client's circumstances when client-related funding for a new resident will begin (a period not to exceed 30 days) from the date of the admission approval. The Contractor and the DHS Case Worker will mutually determine the move-in date for the new resident.

If the County does not provide valid referrals for legally available vacancies within the five-day timeframe, then the County will be financially responsible for 60% of the current capitated rate for the vacant room beginning on the sixth day of vacancy. This financial liability is only applicable if fewer than 49 beds are occupied.

During the period of vacancy when the County is financially liable (when fewer than 49 beds are occupied), the County Project Officer will work with the Contractor to activate the Contractor's external marketing plan and identify possible outside referrals for the vacancies. If no referred clients are identified after a period of 60 days, the County will compensate the Contractor at sixty percent (60%) of the full monthly rate until a proper referral is placed.

- P. In accordance with the Code of Virginia § 63.2-1719 and 63.2-1720, the Contractor will verify that no employees have been convicted of a barrier crime, as defined by § 63.2-1719. The Contractor will keep a Sworn Disclosure Form on file for each staff member employed at Mary Marshall Assisted Living Residence, who must complete this form annually. The Contractor shall develop a system to comply with the requirements of the state code.

4. PROGRAM AND SERVICES: OPERATIONS AND STANDARDS

The Contractor shall provide the residents of MMALR, many of whom have multiple disabilities, with a combination of housing, supportive services, personalized assistance, and mental health and health care designed to respond to the individual needs of those who require assistance with activities of daily living “ADL” and Instrumental Activities of Daily Living “IADL”.

A. Direct Care Services:

The Contractor shall implement Direct Care Services policies as well as the following requirements and standards:

1. The Contractor shall maintain a minimum average ratio of Direct Care Staff to residents of 1:6.5 during day and evening hours and 1:17 overnight. For purposes of calculating the ratio, Direct Care Staff includes Resident Care Coordinators, Nurse Manager, Licensed Practical Nurses (LPN), Health Unit Coordinator, Resident Services Staff and Managers, and facility Directors.
2. The Contractor shall provide the following Direct Care Services program components:
 - a. Medical advocacy with residents’ doctors and medical care practitioners (as the treatment team determines is necessary) that ensures access and linkage to primary medical care, psychiatry, podiatry, other specialists as needed, rehabilitation therapies, hospice services, access to advanced care planning (Advanced Directives, Durable Do Not Resuscitate Orders (DDNRs)), and Physician Orders for Scope of Treatment (POSTs). This includes coordination of medical appointments and medical escorts to doctor’s appointments. Dental services will be coordinated with staff at the County Dental Clinic. The Project Officer or his or her designee will establish a protocol with Dental Clinic staff to schedule screenings and treatment appointments.
 - b. A nursing care delivery system that provides in-house primary health care and includes diagnostic and treatment services, screening for disease risk factors and early signs of illness.
 - c. Operation of a Wellness Center that shall include at a minimum: a nurse’s office, storage and distribution of medications, provision of health screenings and development of health promotion, education, and exercise programs.

- d. Collaborate and coordinate with DHS and/or private providers of mental health, behavioral and psychiatric services to ensure that MMALR residents are receiving the appropriate care.
- e. Collaborate and coordinate with DHS and/or private providers of case management and mental health services to ensure that MMALR residents are receiving the appropriate care.
- f. Provision of skilled nursing and coordination of occupational and physical therapy as part of the residents' individual service plans.
- g. Management of medical and/or mental health emergency situations.
- h. Orientation of new residents to include a user-friendly and easy to read resident manual with information on wellness center hours and services, dining hours and staff roles and responsibilities, including the distinction between the Resident Care Manager and the DHS Case Manager.

B. Medication Management:

The Contractor shall implement medication management policies and procedures that comply with all applicable Virginia Board of Nursing Standards under the section Rules Governing Medication Administration, located at https://www.dhp.virginia.gov/nursing/nursing_laws_regs.htm. The Contractor shall also implement the following additional requirements and standards:

1. Contractor shall implement a medication management program that ensures that residents' medications are in a locked cart or cabinet in the Nursing/Wellness Center Office, except when a resident's UAI assessment indicates the resident is capable of self-administration, in which case those medications may be kept safely secured in the apartment. Insulin will be under secure lock in a refrigerator in the Nursing/Wellness Center Office at MMALR.
2. Medications such as controlled narcotic drugs, psychotropic medications, and dangerous drugs such as Coumadin shall be kept under double lock and key per state regulations.
3. The Nursing Manager shall be responsible for directing or performing routine checks and reviews of medications according to each resident's care plan in the ISP or at least every six months. The Nurse Manager shall develop and implement the health care component of the ISP for all residents of the MMALR. The Director of Nursing will, in association with the DHS Nursing staff, perform a medication reconciliation with the Contractor's medication list and the DHS medication list on a quarterly basis.
4. The Contractor shall employ a pharmacist to review each resident's medication plan on a quarterly basis and identify any concerns or contraindications, which shall then be made known to the residents and their physicians.

5. The Contractor shall develop individual plans for administration of insulin for residents who require insulin.
6. The Contractor shall develop a schedule to administer insulin injections, or to assist any residents who administer their own insulin injections, with pre-drawn syringes distributed by a licensed nurse.
7. Contractor shall develop and implement medication quality assurance plans to eliminate medication errors and medical refusals as much as possible. Medication errors include wrong person, wrong medicine, wrong dose, wrong time, wrong route, medication administered but not recorded, medication reported missing, missed medication due to pharmacy non-delivery, missed medication due to staff error, and other medications errors. All medication errors should be reported to the Project Officer or his or her designee in an incident report within one business day. Refer to Exhibit C for reportable incidents.
8. Contractor will report medication refusals to the prescribing physician via facsimile within one business day and will track all medication refusals. This information shall also be reported to the Project Officer weekly. The Contractor's report shall consist of the date, resident involved, and frequency of the refusal, as well as any past medication refusals for the resident involved.

C. Social and Recreational:

The Contractor shall maintain a social and recreational program that provides a minimum of two activities per day at the facility and three activities outside the facility per week. The Contractor shall also meet the following additional requirements and standards:

1. The social and recreational program shall be directed by the Life Enrichment Director, who shall have a 4-year bachelor's degree in recreation and therapeutic leisure activities. This staff person shall also direct the volunteer program, described below.
2. The Life Enrichment Director shall train all MMALR staff and volunteers to provide and assist with social and recreational programs.
3. The Contractor shall encourage residents to continue engagement in work and community programs.
4. The Contractor shall assess the recreation and leisure needs of residents upon admission and on an on-going regular basis to ensure that their interests are reflected in program planning.
5. Planned activities developed by the Contractor shall be designed to incorporate cognitive stimulation, life skills, physical movement and fitness, sensory stimulation, and socialization skills.

6. The Contractor's staff shall continuously try to engage residents who decline to participate in planned activities and encourage them to take advantage of program activities.
7. The program calendar developed by the Contractor shall include purposeful, interesting and challenging activities suitable to the population, including but not limited to: a variety of exercise programs; cultural activities; special interest outings (e.g. sports events, fishing, shopping, intergenerational programs, small motor activities and crafts, quiet games and small group discussions); food-centered activities; music-centered activities (e.g. local concerts and plays, musical performance, music lessons); horticulture and plant care; and residence-wide parties for all occasions.
8. The Contractor shall provide residents with access to spiritual and religious programs in the MMALR and in the community.
9. The Contractor shall implement a comprehensive transportation plan to ensure that residents have access to the programs and activities in the community (Refer to Section J).
10. The Contractor shall develop a Volunteer Program, which shall be operated and organized at the MMALR. The Volunteer Program shall include volunteers from amongst the residents who wish to provide services in the MMALR and in the greater Arlington community and community volunteers who are interested in providing services to MMALR.

D. Dining and Snacks:

The Contractor shall provide dining and snack services for the MMALR residents. The Contractor shall provide three meals and two snacks per day that conform to the USDA health guidelines. All meals shall be prepared in the full sized commercial kitchen on the terrace level of the MMALR. The Contractor shall provide a nutritious snack and concession bar, taking into account resident preferences.

The Contractor shall also meet the following requirements and standards:

1. A resident food committee shall include residents and be staffed by the cook and the Culinary Director. This committee shall help design menus and provide feedback on the current offerings. A minimum of once per year, a food survey shall be administered to receive feedback from all residents.
2. To promote socialization, the Contractor will instruct MMALR staff to dine with residents, role modeling and engaging people in conversation.
3. The Contractor will develop a method to encourage family and friends to dine with residents.

4. The Contractor shall schedule meal times to provide residents sufficient flexibility to dine on their own schedules and to accommodate a variety of activities both on or off premises:
5. A system shall be put in place to accommodate residents who cannot or choose not to eat at the scheduled meal hours.
6. Residents shall have the opportunity, with food choices, to prepare a lunch bag meal during the morning hours to take with them to activities and other obligations outside of the residence.
7. The Contractor will require the Culinary Director to partner with the Nurse Manager to ensure that meals incorporate the special diet requirements prescribed by doctors for residents with medical issues, such as diabetes, kidney problems, high blood pressure, chronic heart disease and other health issues. In addition, a dietician shall periodically evaluate MMALR to ensure that menus incorporate special diet requirements ordered by residents' Physicians.
8. The Contractor shall require Direct Care Staff to work with residents, especially those on special diets, to assist them in making healthy food choices.
9. The Contractor shall develop a menu that highlights healthy food choices.

E. Residential Services:

The Contractor shall provide residential services, to include custodial, housekeeping, and laundry services. The maintenance of a clean and healthy environment is paramount. The Contractor shall implement the following requirements and standards:

1. Resident Care Coordinators/Maintenance staff shall be responsible for daily cleaning and routine heavy cleaning of common areas. Cleaning schedules shall be prepared and managed by the Contractor's administrative staff. Apartment care needs shall be addressed in residents' ISPs. Residents will be supported to do their own cleaning as they are able. Cleaning assistance will be provided to residents who are unable to do their own cleaning.
2. The Contractor shall solicit proposals from vocational service organizations to provide some or all the cleaning and janitorial work in the common areas and/or laundering of dining and bed linens.
3. Overnight, on-duty Resident Care Coordinator staff may perform some housekeeping and laundry services while on duty provided such tasks do not distract from required monitoring of residents.
4. Because residents should be encouraged to keep their rooms clean and tidy, Contractor staff shall provide such encouragement and support to residents who need assistance in this area.

5. The personal laundry equipment on the 2nd floor shall be available for use by residents. Residents' family and friends should be encouraged to assist residents in this task. The Contractor's staff will provide encouragement and assistance.
6. The Mary Marshall Assisted Living Residence Administrator, with input from the Resident Council, shall establish standards for the cleanliness of the building, with which the Contractor and residents shall comply.
7. The Contractor is responsible for maintaining the cleanliness of the building through routine inspections and quality assurance reviews. The Contractor shall make the results of these reviews and inspections available to the Project Officer upon request.

F. Building Maintenance Services:

The Contractor shall provide building services that include comprehensive routine and preventive maintenance facility and grounds maintenance. The Contractor shall be responsible for maintaining all the building's systems, components, and equipment in optimal operating condition. The Contractor shall also be responsible for the following additional standards and requirements:

1. The Contractor shall develop programs that include but are not limited to routine inspections to identify maintenance issues that might not get reported by residents or staff and all preventive work that can be scheduled routinely to preclude costly breakdowns.
2. The Contractor shall maintain a work order system that tracks the time and cost to complete maintenance work.
3. The Contractor shall ensure that the grounds of MMALR are clean and clear of debris and litter and that the landscaping plan approved by the Project Officer is maintained.
4. The Mary Marshall Assisted Living Residence Administrator shall routinely assess the quality of the maintenance work and implement program changes as needed.

G. Physical Safety and Security:

The Contractor shall be responsible for maintaining the physical safety and security of residents, staff, and visitors and the facility itself.

1. The Contractor shall maintain protocol to handle medical and mental health emergencies of all types. The protocol shall include, at a minimum, the following steps:
 - a. Initial assessment of immediacy and severity of the emergency;
 - b. Notification and cooperation with appropriate County agencies, including DHS, Office of Emergency Management, Fire Department, and Police Department;

- c. Maintain a relationship with DHS Behavioral Healthcare Division Emergency Staff for assistance with psychiatric emergencies;
 - d. Liaison with local hospital emergency rooms to facilitate admission of MMALR residents.
2. The Contractor shall maintain a plan for sheltering residents in place in the event of power outages or other emergencies.
 3. The Contractor shall employ or sub-contract with a reputable company to provide a security system for the building and grounds.

H. Administrative and Financial:

The Contractor shall be responsible for providing all necessary administrative and financial services required to operate the MMALR, including but not limited to financial reporting, budget preparation and control, procurement, insurance, resident billing and accounts payable, financial audit, records management systems, and automated information system. The Contractor also shall provide technical support for other administrative functions including records management, budget preparation, automated information systems, and procurement.

The Contractor shall apply for, obtain, and maintain a license from the VDSS to operate the MMALR. For this Agreement, Administration and Financial Services also includes financial reporting, budget preparation and control, procurement, insurance, resident billing and accounts payable, financial audit, records management systems, and automated information system.

The Contractor shall provide the accounting and financial reporting, human resource, payroll, benefits, and billing through its National Service office.

I. Resident Accommodations:

The Contractor shall maintain resident accommodations, including resident rooms, living room, dining areas, transportation, mail, telephones, smoking, resident councils, pets living or visiting the facility as well as tracking personal possessions.

J. Transportation Plan:

The Contractor shall develop and implement a transportation plan that assists residents in making arrangements for transportation to work, medical/health appointments, and community events and programs and utilizes County transportation programs available to seniors and persons with disabilities. The plan shall be inclusive of requirements under the County Site Plan to encourage employees to utilize public transportation.

A van purchased by the Contractor shall be maintained and operated primarily for group activities and when public accommodations cannot be otherwise arranged. Should the van not be available to assist a resident with medical and health appointments who lacks transportation, Contractor staff shall assist the client with alternative transportation options and collaborate with DHS Case Manager.

K. Program support and Supervision:

The Contractor shall provide program support and supervision through its National Healthcare and Program Development Divisions and Consultants as follows:

1. The Volunteers of America Director, Housing Healthcare Services Integration shall supervise the Mary Marshall Assisted Living Residence Administrator and provide programmatic training and monitoring of all staff. The Mary Marshall Assisted Living Residence Administrator must have broad clinical experience with similar assisted living facilities and expertise in supportive housing programs for individuals with disabilities.
2. The Volunteers of America Executive Vice President of Healthcare Operations (Wayne Olsen) or his successor in this position shall be responsible for insuring that financial management, human resources, and information support systems are in place at the MMALR and that the interface between MMALR and the National Office are effectively coordinated. Any successor to Mr. Olsen must have experience in managing and the administration of assisted living facilities, including with financial and business decision-making for such facilities.
3. On-going internal (financial and clinical) audits shall be performed by the National Services Office at a minimum of once per year. Results will be reported to the County within 60 days of completion of the audits.

L. Personnel:

The Contractor shall implement personnel policies and procedures for MMALR. The Contractor shall employ an adequate number of qualified staff to provide all services under this Contract. At a minimum, the Contractor shall employ those staff referenced in the Organizational Chart at Exhibit E. The Contractor shall provide the Project Manager with an Organization Chart and job descriptions of all staff. In the event, any of the following positions experience a vacancy:

1. Mary Marshall Assisted Living Residence Administrator
2. Director of Resident Services
3. Director of Clinical Services

The Contractor shall create a hiring committee for the position that includes at least one DHS staff and one citizen member. The Mary Marshall Assisted Living Residence Administrator shall have ultimate responsibility and authority for the selection of staff. The Contractor shall implement and operate a personnel system that includes at a minimum the following:

1. Written personnel policies and procedures that address: benefits, classification and compensation, discipline (standards of conduct), employee performance evaluation, continuing education requirements, initial orientation and in-service training, equal employment opportunity, grievance process, hours of work, leave, outside employment, recruitment, and selection, transfer and promotion, termination and layoff, and travel and on-the-job expenses.

2. Written job descriptions with explicit responsibilities and qualification statement for all positions, and a system for documentation of employees' work-related education and training.
3. The Contractor shall employ sufficient staff who are bilingual (English/Spanish) to ensure that bilingual staff are available to residents on a daily basis. If a resident's native language is something other than English or Spanish, the Contractor and the Project Officer will arrange to provide interpretation services to the resident on an ongoing basis.
4. The Contractor shall ensure that all staff are fully versed in their job duties and responsibilities and maintain the credentials of the certifications they hold. All individuals hired as Resident Care Coordinators shall hold the certification of Certified Nursing Assistant in the Commonwealth of Virginia.
5. All hiring shall be conducted in compliance with local, state, and federal equal employment opportunity regulations.
6. The Contractor shall ensure that all staff are paid a living wage, currently \$14.50/hour, per the County's Living Wage Policy, which can be accessed here: <https://budget.arlingtonva.us/purchasing/>.

The Contractor shall implement "best" practice employee retention programs with support from its human resources consultant division. The Contractor shall provide an in-service training program for permanent and temporary staff that exceeds the minimum requirements. This training shall be mandatory for all service staff and shall include but not be limited to:

1. Philosophy of person-centered care and aging in place
2. Multiple disabilities, dementia, and the aging process
3. Addictions, addictive substances, and emotional make-up of persons with substance abuse history
4. Behavior management and monitoring for symptoms
5. Cultural diversity, limited English proficiency, and sensitivity
6. Cross training in different functions such as dining assistance and leisure programming
7. Teamwork and customer service
8. Psycho-active drugs, side-effects, and a general overview of their use
9. Dealing with challenging or aggressive behaviors

M. Payment Terms

1. When clients enter MMALR on a day other than the first of the month, or if a client permanently leaves MMALR on a day other than the end of the month, the Contractor will receive a prorated payment from the County for that month. The prorated amount will be the calculated County subsidy (total cost less expected client payment and expected outside revenue), multiplied by the remaining days in the month, divided by the total number of days in the month.
2. The Contractor is responsible for submitting an invoice for payment in an agreed-upon format by the 17th of the month following the month for which the Contractor is invoicing. If the 17th of the month falls on a weekend or holiday, the invoice shall be submitted on the next business day.

All invoices will be accompanied by agreed-upon schedules showing all monthly actual, allowable operating expenses for the project. All reimbursement or payment requests are subject to approval by the County Project Officer, who will validate that the expenses are allocable to the contract and are sufficiently documented.

3. The monthly invoice package must include the following:
 4. Invoice detailing the requested reimbursement amount for the month of service being invoiced.
 5. The completed MMALR Monthly Client Invoice Detail (Exhibit D).
 6. Detail of actual, allowable expenses for the service month being invoiced.
 7. Should the County, via its Project Officer, disapprove any payment request in part or in full, the Project Officer will afford the Contractor the opportunity to clarify or change the payment request. Should the County, via its Project Officer, approve the payment request, the County will provide payment of the appropriate amount to the Contractor within 30 days of the date on which the County approves the payment request. Once approved, there will be no corrections of earlier invoices and all payments made will be final.
 8. On quarterly basis, the Contractor shall provide resident payment detail (including actual payments from residents to VOA, outstanding payments from residents wed to VOA, and resident payment plans) and any residents who have accumulated a pharmacy balance.
 9. The Contractor shall make all reasonable efforts to raise funds, attempt to attract private pay residents, and reduce operating costs.

5. ADDITIONAL PROVISIONS

The Contractor shall comply with all performance based information as follows:

- A. The Contractor must submit to the Project Officer monthly reports summarizing performance and detailing the following information (format to be determined with Project Officer):
1. Admissions
 2. Denials (with Reasons)
 3. Discharges (with Reasons)
 4. Hospitalizations (with Reasons)
 5. Staffing Updates (Hiring, Separations, Training, Etc.)
 6. Incidents (All reportable incidents in Exhibit B)
 7. Facility Concerns and Issues
 8. Quality Assurance activities, findings, and corrections related to resident care and nursing
 9. Performance measure data detailed in Section B below.
- B. The Contractor will provide best-practice performance measures in each of the categories below, to be presented annually to the Project Officer for review and approval by July 31 of each year. The Contractor shall submit the information in a format determined by the Project Officer. The Contractor shall provide updates on the progress of performance measures in the monthly report.

Performance measures will be monitored for a possible annual performance bonus of up to \$25,000 for the Contractor. The Contractor shall be awarded a point value for each of the measures listed below, with a maximum of 20 points. Pro-rated funds for a measure may be awarded.

1. Licensure: 3 points possible: 3 points awarded for a 3-year license; 1 point awarded for a 2-year license; and no points for a 1-year license.
2. Staff Development: 3 points possible for the following - 1) documenting that 100% of the Contractor's staff received at least three specialized trainings or other development opportunities on mental health conditions that exceed licensure training requirements during the fiscal year; 2) documenting that 100% of new staff received orientation to mental health services prior to delivering direct care services.
3. Key Staff Positions Filled and Retained: 2 points possible – The Administrator, Director of Clinical Services, and Director of Residential Services are all filled with permanent hires and retained for a period of three years.

4. Community Integration: 3 points possible - Points are awarded when 90% or more of the residents engage in the community four or more times a month. Engagement in the community is defined as residents fully engaged and active in community life by accessing or participating in recreational, social, physical, or faith-based activities.
5. Fall Prevention: 1 points possible – Implement an evidence based fall prevention program and meet the goals outlined by the quality indicator below. The rates of falls must be less than 5 per 1,000 resident days.

Quality Indicator	Standard Reference	MMALR Goal
Falls	9 per 1,000 Resident Days	5 per 1,000 Resident Days

6. Health and Well-being: 3 points possible – Residents will demonstrate positive healthcare indicators in the areas of reduced blood pressure, reduced diabetes diagnosis, prescribed medication adherence, access to dental services, weight management, and nutrition awareness. The Contractor must meet the following standards to receive the points.
 - a. For residents with a high blood pressure diagnosis, 80% of the time blood pressure is less than 150/90 for clients over 60, less than 140/90 for those under 60, and less than 140/90 for clients (all ages) with diabetes or chronic kidney disease (see Report from the Eighth Joint National Committee at <http://jama.jamanetwork.com/article.aspx?articleid=1791497>).
 - b. For residents with a diabetes diagnosis, 80% of residents will have an A1C test of less than 8% per American Diabetes Association 2016 Guidelines, Page S39 at http://care.diabetesjournals.org/content/suppl/2015/12/21/39.Supplement_1.DC2/2016-Standards-of-Care.pdf.
 - c. 90% of residents shall demonstrate medication adherence. Adherence is defined as 90% of medications taken within the physician’s prescribed guidelines.
 - d. Provide the number of residents receiving scheduled dental care through Arlington County Public Health’s Dental Clinic. The Contractor will coordinate the dental care.
 - e. Conduct two weight management and nutrition awareness programming events to increase awareness regarding healthy eating and living.
7. Nursing Services: 3 points possible – Medication error rate for all medications administered will be less than 2%. There will be no significant medication errors, as defined by the table below:

Quality Indicator	Standard Reference	MMALR Goal
Medication Error Rate	5% or less	2% or less
Significant Med Error Rate	None	0

8. Medical Services: 2 points possible – Contractor shall establish a robust on-call emergency system for pharmacy medications, mental health crisis and medical issues. This system will be reviewed and approved by the Project Officer before execution.
- C. The Contractor shall maintain a Community Advisory Council, as required by the County approved Site Plan, of not fewer than seven members, including two members appointed by the Arlington Commission on Long Term Care Residences or another designated Arlington advisory group. This and any other Site Plan conditions are subject to the Zoning Administrator’s approval. The composition of the Council shall be submitted to the Project Officer.
- D. The Contractor shall comply with all DHS requests for information. The Contractor shall utilize an Electronic Health Record (EHR) system and ensure that all necessary software upgrades occur in a timely manner.
- E. The Contractor shall maintain client service records for a minimum of five years after the expiration of this Agreement unless the County takes possession of all records prior to that date.
- F. Incident reports will be completed by the appropriate Mary Marshall staff and manager and sent via secure email to the DHS Aging and Disability Services Division within one business day after the incident took place. Incident reports are required by DHS for all incidents listed in Exhibit C. If an incident occurred on a Friday, it will be sent to DHS by the following Monday.
- G. Urgent matters, meaning situations that threaten the life, health, safety, or welfare of a resident, including hospitalizations, and calls to emergency services, will be communicated immediately to the individual’s DHS Case Manager and the Aging and Disability Services Division via phone or email to the Project Officer with an incident report to follow as above.
- H. To ensure security of residents’ possessions, Mary Marshall staff will fill out a personal possessions log for each client at time of admission, annually thereafter, and at discharge. A copy of the current log will be submitted to Project Officer annually on July 1. At a minimum the log will include the individual’s name, date of the log, name and signature of staff completing inventory, and a detailed inventory of personal belongings to include clothing (by type and quantity), and personal property.
- I. The Contractor shall maintain a Virginia Department of Social Services Assisted Living License. The Contractor shall inform the Project Officer or its designee of any scheduled

and unscheduled site visits of the Licensing Office and of any citations received after an inspection of the MMALR or reports of violations by residents or families.

**Mary Marshall Assisted Living Residence
ATTACHMENT B**

Contract Pricing

The Contractor shall be paid monthly in accordance with the following rates, effective the date of full execution of the Agreement:

Category	Amount
Rent Per Unit (20 units w/ kitchenette)	\$1,007
Services Per Unit (20 units w/ kitchenette)	\$4,407
<i>Total Per Unit</i>	<i>\$5,414</i>
Rent Per Unit (32 units)	\$985
Services Per Unit (32 units)	\$4,429
<i>Total Per Unit</i>	<i>\$5,414</i>
Total Units	52
Gross Charges Per Month	\$281,528
Less Estimated Auxiliary Grants Per Month (Estimated)	-\$22,213
Less Housing Choice Voucher Per Month (Estimated)	-\$6,307
Less Client Contributions Per Month (Estimated)	-\$41,862
Monthly Arlington Contribution (Estimated)	\$211,146
Yearly Maximum	\$2,533,752

Payments to the Contractor shall not exceed \$2,533,752 in YR1.

ATTACHMENT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between Arlington VOA ALR Operating, Inc. (hereafter referred to as “Business Associate”) and the County Board of Arlington County, Virginia (hereafter referred to as “Covered Entity” or “County”) (collectively “the parties”) and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

Recitals

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services (“DHHS”) with respect to the HITECH Act (collectively “federal law”).

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter “Business Associate Agreement”);

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, **Business Associate** and **Covered Entity**, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting.** "Accounting" means a record of disclosures of protected health information made by the Business Associate.
- b) **Breach.** "Breach" means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA, which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** "Business Associate" means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** "Covered Entity" means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** "Designated Record Set" means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** "Electronic Protected Health Information" means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** "HITECH Act" means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.

- k) **Individual**. "Individual" means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.
- l) **Protected Health Information**. "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- m) **Remuneration**. "Remuneration" means direct or indirect payment from or on behalf of a third party.
- n) **Required By Law**. "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) **Secretary**. "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.
- p) **Security Incident**. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) **Underlying Agreement**. "Underlying Agreement" means the County contract for goods or services made through the County's procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
- r) **Unsecured Protected Health Information**. "Unsecured Protected Health Information" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

2) **Obligations and Activities of Business Associate**

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement

policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.
- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the

Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more obligation(s) of the Covered Entity's under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including, but not limited to, providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);
4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;

5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and
 6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

3) Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 1. Disclosure is Required by Law;
 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
 3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) Obligations of Covered Entity

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its Notice of Privacy Practices (NOPP).

- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.
- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) Term, Termination and Breach

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.
- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.
- d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members,

subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.

- e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

6) Miscellaneous

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to, Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first class mail, postage prepaid at:

(1) Jan Longman,
Arlington County -DHS Privacy Officer
2100 Washington Blvd. – 4th Floor
Arlington, Virginia 22204

(2) Stephen Maclsaac
County Attorney
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(3) County Project Officer
Harry Ayling
Aging and Disability Services
Department of Human Services
2100 Washington Boulevard, 4th Floor
Arlington, VA 22204

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

Arlington VOA ALR Operating, Inc.
Attn: ADMINISTRATOR
2000 5th Street South
Arlington, VA 22204

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorneys' fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the

intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.

- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.
- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right, upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.
- q) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible

for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.

- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.
- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

Arlington County, Virginia

Business Associate

By: _____
(Signature)

By: _____
(Signature)

Name: Jan Longman

Name: _____

Title: DHS County Privacy Officer

Title: _____

Date: _____

Date: _____

ATTACHMENT D

NONDISCLOSURE AND DATA SECURITY AGREEMENT (CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of Arlington VOA ALR Operating, Inc., (“Contractor”), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 17-183-SS (the “Project” or “Main Agreement”) or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as “County Information” or “Information”).

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of County Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her (“his”) Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Project. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor’s work site or the County’s physical facility, if the Contractor is working onsite, without written authorization of the County

Project Officer. If remote access or other media storage is authorized, the Contractor is responsible for the security of such storage device or paper files.

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the County and connected to the County network, are secure and free of all computer viruses, or running the latest version of an industry-standard virus protection program. The Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. The Contractor will not download any County Information except as agreed to by the parties and then only onto a County-approved device. The Contractor understands that downloading onto a personally owned device or service, such as personal e-mail, Dropbox, etc., is prohibited.

Contractor agrees that it will notify the County Project Officer immediately upon discovery or becoming aware or suspicious of any unauthorized disclosure of County Information, security breach, hacking or other breach of this agreement, the County's or Contractor's security policies, or any other breach of Project protocols concerning data security or County Information. The Contractor will fully cooperate with the County to regain possession of any Information and to prevent its further disclosure, use or dissemination. The Contractor also agrees to promptly notify others of a suspected or actual breach if requested.

The Contractor agrees that all duties and obligations enumerated in this Agreement also extend to its employees, agents or subcontractors who are given access to County information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by the Contractor. The Contractor agrees that it shall take all reasonable measures to ensure that its employees, agents and subcontractors are aware of and abide by the terms and conditions of this agreement and related data security provisions in the Main Agreement.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices in place to ensure confidentiality, protection, privacy and security of County information and County-networked resources and to ensure compliance with all applicable local, state and federal laws or regulatory requirements. Therefore, to the extent that this *Non-Disclosure and Data Security Agreement* conflicts with the Main Agreement or with any applicable local, state, or federal law, regulation or provision, the more stringent requirement, law, regulation or provision controls.

At the conclusion of the Project, the Contractor agrees to return all County Information to the County Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the Main Agreement.

Authorized Signature: _____

Printed Name and Title: _____

Date: _____

EXHIBIT A
PHILOSOPHY FOR OPERATION OF THE FACILITY

The Contractor agrees that the MMALR shall be guided by the following philosophy and goals.

1. AGING-IN-PLACE

In agreement with the U.S. Centers for Disease Control and Prevention, MMALR residents shall maintain the ability to live in the community safely, independently, and comfortably, regardless of age, income, or ability level. Residents will receive the necessary services that allow them to remain in the residence and age in place to maximize their independence and their continuity of care.

MMALR will make a good faith effort to ensure all residents are allowed to positively age-in-place with the best care possible. No resident shall be permanently discharged or prematurely institutionalized to a higher level of care or the general community until all service options have been explored and exhausted. This includes short-term psychiatric and/or medical hospitalizations and rehabilitation. MMLAR shall be considered a permanent home for all residents.

2. PERSON-CENTERED CARE

The services shall support a philosophy of person-centered care that promotes recovery, engagement and self-sufficiency of each individual and includes:

- A. Full participation by each individual in the development of his/her treatment and services plan.
- B. Services shall be based on “evidence-based” and “best” practices - even when this means challenging conventional wisdom.
- C. Services shall strive to meet the needs and wants of each resident served and consider each person’s preferences.
- D. Services shall offer flexibility and be focused on individual interests and needs and consider the different levels of functioning of each individual.
- E. Services shall be provided by committed, caring, well- trained staff who share the values of the residence.
- F. Residents shall be empowered and encouraged to participate and partner with staff in all programs.
- G. Residents shall be afforded choice in recreational programs, food choices, and dining service hours.

3. PERSONALIZED ENVIRONMENT

The MMALR is a home for its residents and, therefore, operations shall support a homey atmosphere that is clean, attractive, and furnished in a manner in which the residents, staff and family members will be comfortable. To this end, the Contractor shall incorporate the following into daily operations and management:

- A. The building will be divided into neighborhoods with the goal to encourage residents to develop close relationships with those who live close-by and to be connected to a small group.
- B. The overall environment should promote and protect the privacy of each resident. (e.g., residents shall have access to space, in addition to their bedrooms, for confidential conversations, visits and discussions.)
- C. The MMALR shall be a non-smoking building. The smoking policy will make it clear that smoking is permissible in designated outdoor areas only.
- D. A beauty salon/barber shop or services will be available for residents who might not be able to leave their unit.
- E. Within the MMALR, residents shall be encouraged to utilize the laundry areas, pantry, and community space as if they were in their own home.
- F. The residence shall be pet friendly. If a resident is permitted to keep pets, a policy should be developed to ensure that pets are properly cared for and cleaned up after and not an annoyance to other residents or staff. If residents are not permitted to keep pets, the residence shall adopt a policy that encourages pet visitation to the residence.
- G. Residents are permitted to use alcohol in their apartments only if such use is not contraindicated by physical, mental health, and pharmaceutical conditions.
- H. The residence shall be open, accommodating, and friendly to visiting family and friends.

4. INTEGRATION WITHIN THE MMALR AND WITHIN THE ARLINGTON COMMUNITY

- A. The Contractor shall build a supportive community within the residence. This means that all staff shall engage with residents in a manner appropriate to their position. In addition, residents shall be encouraged to engage with and support one another in the achievement of their individualized goals.
- B. Opportunities for residents to benefit from the natural supports of family and/or friends shall be promoted because such interaction is essential to the quality of life.
- C. The Contractor shall promote opportunities for each individual to participate fully in the Arlington community and with the maximum degree of independence possible.

5. COST-EFFICIENCY AND EFFECTIVENESS

The Contractor shall operate in a cost effective and efficient manner while maintaining high quality standard in delivery of services. The Contractor shall be accountable to the MMALR residents and to the Arlington County Board.

EXHIBIT B: Reportable Incidents

Peer to Peer	Restraint	Money Management
Physical Attack	Pharmacological	Theft
Sexual Assault	Mechanical	Error
Verbal Threats	Physical	Other
Victim	Seclusion	
Perpetrator		
Other		

Medication	Serious Injury	Other Incidents
Wrong Person (ERROR)	Death	Potentially Violent Situation
Wrong Medicine (ERROR)	Seizure	Behavioral Incident
Wrong Dosage (ERROR)	Fall	Minor Injury
Wrong Time (ERROR)	Suicide Attempt	Client to Staff Altercation (with no/minor injury)
Wrong Route (ERROR)	Assault	Infectious Exposure
Medication administered, but not recorded (ERROR)	Burn	Wound of unknown origin
Medication Reported Missing (ERROR)	Illness	Fall w/no injury
Missed Medication (non-delivery by pharmacy) (ERROR)	Auto Accident	Behavioral Incident w/minor injury
Missed medication due to staff error (ERROR)	Other	Self-Injurious Behavior
Other Medication Issues (ERROR) and Medication Refusals		Property Destruction
		Client Reported Missing
		Automobile Accident with no/minor injury
		Program Closure
		Privacy Violation
Other incident deemed to be reportable		

EXHIBIT C: Reporting Requirements

Report or Deliverable	Due Date or Frequency	County Staff
Incident Reports	1 business day	Project Officer or designee
Discharge Letter	14 days before discharge	Project Officer
Monthly Narrative and Data Report	10 th of month	Project Officer
Monthly Invoice	17 th of month	Administrative Officer
Quarterly Financial Updates	17 th of month	Administrative Officer
Annual Audit	Annually prior to November 1	Administrative Officer
Policies and Procedures	Upon Request	Project Officer or designee
Other reports deemed as necessary	Upon Request	Project Officer or designee
Citizen/Community Complains	Next business day	Project Officer of designee
Personal Property Log	July 1, annually	Project Officer or designee

EXHIBIT D: Monthly Client Invoice Detail Format

SEE ATTACHED "EXHIBIT D". Project Officer will provide an electronic version for the Contractor's convenience.

EXHIBIT E: MMALR Organizational Chart – FTE Count (42.56 FTEs)

MARY MARSHALL ASSISTED LIVING RESIDENCE
ORGANIZATIONAL CHART

