**EMERGENCY PROFESSIONAL SERVICES AGREEMENT**

**BETWEEEN THE**

**MAYOR AND CITY COUNCIL OF BALTIMORE**

**AND**

**[CONSULTANT’S LEGAL NAME]**

**THIS EMERGENCY PROFESSIONAL SERVICES AGREEMENT** (“Agreement”), made this\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 20\_\_, by and between **[CONSULTANT’S LEGAL NAME]** (the “Consultant”), and the **MAYOR AND CITY COUNCIL OF BALTIMORE**, (the “City”) a municipal corporation, acting by and through its [NAME OF DEPARTMENT/AGENCY] (the “Department” or the “Agency”).

**WHEREAS,** Article VI, § 11(c) of the Baltimore City Charter does not require professional services to be formally advertised (i.e., competitively bid); and

**WHEREAS**, the City’s contracting for professional services is engaged in the manner prescribed by a resolution of the Board of Estimates pursuant to Article VI, § 11(d) of the City Charter; and

**WHEREAS**, on or about March 18, 2020, a health emergency involving the novel coronavirus was declared by the City (the “emergency”) giving rise to the need to obtain professional services to address the emergency; and

**WHEREAS,** pursuant toArticle VI, § 11(e)(ii) of the Charter, this event was an emergency of such a nature that the public welfare would be adversely affected by awaiting the approval of the Board of Estimates prior to obtaining the supplies, materials, services, or public work; and

**WHEREAS**, the emergency is of such a nature that the provision of professional services is needed by the City; and

**WHEREAS**, the parties desire this Agreement to evidence the terms and conditions agreed upon by the parties.

**NOW, THEREFORE,** in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**A. The Project.**

The project is for [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Project”).

**B. Consultant Obligations and Services.**

1. The Consultant agrees to provide the following:

Task 1: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

Task 2: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]; and

Task 3: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].

which professional services are more specifically set forth and described in the scope of services from the Consultant’s proposal, which is attached hereto as **Exhibit 1** (the “Proposal”). In the event of any conflict between the terms of this Agreement and the **Exhibit 1**, the terms of this Agreement shall control.

2. The Consultant shall be responsible for any error, inconsistencies or omissions in any data, computations, reports or other documents prepared by the Consultant. It shall be the responsibility of the Consultant throughout the period of performance under the Agreement to use due care with professional competence. The Consultant will immediately correct at no additional cost to the City any and all errors and omissions in the data, reports or other documents prepared by the Consultant. The Consultant further agrees, at no additional cost to render assistance to the City in resolving problems relating to the errors in data, reports or other documents prepared by the Consultant.

1. The Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom, and the City shall not be responsible for discovering deficiencies therein. The Consultant shall correct such deficiencies without additional compensation, except to the extent such action is directly attributable to deficiencies in City furnished information.
2. The Consultant shall deliver all data, computations, reports or other documents in accordance with the procedures set forth in its Proposal.

5. The Consultant shall assign key personnel to the Project and any changes and/or additions in the indicated key personnel shall be subject to the approval of the Department/Agency.

**C. Obligations of City.**

1. The head of the Department/Agency or his/her designee will have general authority and responsibility to act with respect to this Agreement.
2. The City will provide all appropriate information in its possession concerning the Project, including design, construction, or other documents.
3. All requested data, reports, maps, plans, specifications and other information that the City has in its possession will be made available to the Consultant by the City without charge.
4. If the City learns at any time during the course of the Consultant’s performance of the Agreement that any such information previously supplied by it, although complete accurate and adequate when provided, is no longer so, the City will advise the Consultant immediately of this fact and supplement or amend the information previously provided in whatever way necessary to make it complete, accurate, and adequate.

**D. General Conditions.**

1. Rescission/Termination for Cause. Failure of the Consultant to make satisfactory progress pursuant to the terms herein shall give the City the right to rescind the Agreement upon written notice to the Consultant; and shall give the City the right to deduct from any payments that may be due or may become due to Consultant all costs and charges incurred by the City by reason of such delay. In the event that this Agreement is rescinded by reason of such delay, then all data, computations, reports, and other documents pertaining to the Agreement, or prepared by the Consultant hereunder, and any unused materials, supplies, or equipment supplied by the City shall be delivered to the City upon demand.
2. Termination, Alteration, or Modification for Convenience. The City, at its discretion, will have the right, at any point prior to completion, to order the Consultant, in writing, to terminate, alter, or modify the services to be performed in whole or in part, even though such termination, alteration, or modification will result in an increase or decrease in the services of the Consultant. If the City terminates services in full, the Consultant, upon payments of amounts actually due, shall deliver to the City all data, computations, reports, or other documents, computations pertaining to the Agreement, whether completed or partially completed, all of which shall become the property of the City. If alteration, or modification of the services to be performed results in an increase or decrease in the services of the Consultant, appropriate adjustments in payment to the Consultant will be made by the City.

3. Bankruptcy. If the Consultant files for bankruptcy, is forced into bankruptcy by creditors, or is otherwise declared bankrupt under any chapter of the Bankruptcy Code, it shall be considered an immediate event of default under this Agreement, and the City may instantly terminate this Agreement at its sole discretion. In that event, all funds presently held by the City and due to the Consultant will be paid to the Trustee in Bankruptcy appointed by the Court.

4. Conflict of Interest. By executing this Agreement, the Consultant asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. The Consultant agrees to refrain from entering into all such practices or agreements during the term of this Agreement (and any extensions thereto), including any agreements and/or practices that could give rise to even the appearance of a conflict of interest. Furthermore, the Consultant asserts that it has fully disclosed to the City any and all practices and/or agreements of whatever nature or duration that could give rise to even the appearance of a conflict of interest with the parties or subject matter of this Agreement and will continue to do so during the term of this Agreement and any extensions thereto.

5. Subcontractors or Subconsultants. The Consultant shall identify and notify the City of any subcontractor or subconsultant retained by the Consultant. Unless not practical due to the emergency, no such subcontractors or subconsultants shall be retained without the prior written consent of the City. The Consultant shall be responsible for the work and conduct and coordination of any subcontractors or subconsultants, at all times.

6. Data. The City is the owner of the City’s data. Each party hereto is to make available to the other party, without cost, all data for the services to be performed which is in their respective offices.

7. Assignment. The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and their respective successors and assigns, provided the personnel of the organization that is the successor to the Consultant, whether such successor be an individual, a partnership or a corporation, is acceptable to the City. The Consultant shall not assign this Agreement nor any right to any monies to be paid it hereunder, nor shall any part of the work be done, nor materials, supplies, or equipment furnished under such Agreement without prior written consent of the City.

8. Prohibition of Contingency Fees. The Consultant warrants that it has not employed or retained any company or persons, other than a bona fide employee or agent working solely for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee or agent working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City will have the right to rescind this Agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

9. Nondiscrimination. In the performance of the work covered by this Agreement, the Consultant shall not discriminate against any worker because of race, creed, age, color, sex, political affiliation, national origin, sexual orientation or qualified handicap.

10. Ownership of Work Product. All data, computations, reports and other documents prepared by the Consultant in connection with the proposed work shall be the sole and absolute property of City.

11. Compliance with Laws. The Consultant shall follow all applicable Federal and State laws and regulations, and Baltimore City laws and regulations, including those now in effect and hereafter adopted.

12. Indemnification.

(a) The Consultant shall indemnify, save and hold harmless the City, its officers, agents, employees, and volunteers from any and all liability, claims, suits, demands, actions, damages, and expenses (including reasonable attorney fees) of whatsoever kind and by whomsoever brought against the City, its officers, agents employees, and volunteers, arising from or in connection with any willful or negligent act, error or omission of the Consultant, its employees or agents in the performance of this Agreement. This requirement shall be included in all subcontractor or subconsultant agreements.

(b) In the event the Consultant uses intellectual property in conjunction with this Agreement, it warrants that the intellectual property does not infringe or otherwise violate any worldwide intellectual property rights (including patent, copyright, trademark, or trade secret), and in the event of a claim of a violation of a third party’s intellectual property rights the Consultant agrees to defend any action brought against the City. Should any intellectual property used in this Agreement become the subject of an intellectual property claim, the Consultant may (i) procure for the City the right to continue using the intellectual property; (ii) replace or modify the intellectual property so as to make it non-violating; or, if (i) and (ii) are not commercially reasonable, (iii) terminate the Agreement and pay the City an equitable adjustment.

(c) The Consultant’s obligation to indemnify the City as provided in this Section shall not be limited by or to the level of liability insurance required under the provisions of this Agreement, or by any provision, document or instrument which may be contained in, incorporated in, or attached, or otherwise made a part of this Agreement.

(d) This Section shall survive the termination of this Agreement.

13. Non-Hiring of Officials and Employees. The Consultant shall not engage, on a full or part-time basis, during the period of the Agreement, any professional or technical personnel who are or who have been at any time during the period of the Agreement in the employ of the City, except regularly retired employees, without consent of the head of the City agency or his/her designee.

14. Wages. For billing purposes, the Consultant shall furnish a list of personnel to be providing the services. The list shall include the name, employee number, classification and actual salary of each employee. The City will be advised in writing of revisions to personnel roster.

15. Claims / Disputes. The Consultant agrees to prosecute the work continuously and diligently and that compensation or extension of time resulting from delays, not the fault of the Consultant shall be settled by agreement with the head of the Department/Agency or his/her designee.

1. The head of the Department/Agency or his/her designee shall in all cases determine the amount or quantity and acceptability of the work and materials which are to be paid for under this Agreement, shall decide all questions in relation to said work and the performance thereof, and shall, in all cases, decide questions which may arise relative to the fulfillment of this Agreement or to the obligations of the Consultant thereunder.
2. To prevent disputes and litigation, where the Consultant is not satisfied with the decision of the head of the Department/Agency or his/her designee, the Consultant shall submit the claim to the head of the Department/Agency or his/her designee, who will decide any dispute between the Consultant and the City, and his determination, decision and/or estimate shall be a condition precedent to the right of the Consultant to receive any monies under this Agreement, and is subject to review on the record by a court of competent jurisdiction.

16. Retention of Records. The Consultant shall maintain records of all actions, and accurate books of account for all funds received and disbursed, with full documentation to substantiate the transactions. Records shall be retained for a period of at least three (3) years after receipt of the final payment under this Agreement or such longer period as required by law. If the Consultant should cease to exist, custody of the records for the Agreement will be immediately transferred to the City.

17. Publication. At such times and in such forms as the City may require, there shall be made available to the City such statements, records, reports, data and information as the City may request pertaining to matters covered by this Agreement. The City reserves the right to publish and/or make public any and all such statements, records, reports, data and information resulting from the services provided hereunder. However, the Consultant must obtain the prior written consent of the City to publish and/or make public any statement, record, report, data or information resulting from the services provided hereunder.

18. Audits. At any time during normal business hours and as often as the City/or its representatives may deem necessary, there shall be made available to the City or its representative for examination, all of the Consultant’s records with respect to all matters covered by the Agreement, and the Consultant will permit the City or its representative to audit, examine and make excerpts of transcripts from such records, and to make audits of all contract invoices, materials, payrolls, and other data relating to all matters covered by this Agreement.

19. Confidentiality. The City is subject to the Maryland Public Information Act.

**E. Insurance.**

The Consultant shall procure and maintain during the life of this Agreement, the following required insurance coverage:

1. Professional Liability, Errors, and Omissions coverage shall be provided at a limit of not less than One Million Dollars ($1,000,000.00).
2. The Consultant shall purchase and maintain commercial general liability insurance at limits on not less than One Million Dollars ($1,000,000.00) per occurrence for all damages arising out of bodily injury or death and property damages. For those policies with aggregate limits, a minimum limit of Three Million Dollars ($3,000,000.00) is required. Consultant shall require any subconsultant to provide the same coverage.
3. If applicable, Consultant shall purchase and maintain molestation and abuse coverage under general liability at a limit of One Million Dollars ($1,000,000.00) per incident and a minimum of Three Million Dollars ($3,000,000.00) aggregate limit to cover vulnerable persons including but not limited to minor children in connection with the Project.
4. If applicable, Consultant shall maintain Technology Errors and Omissions Liability Insurance, with annual, aggregate limits of no less than One Million Dollars ($1,000,000), pertaining to programming errors, software performance, and performance failures rendered by the Consultant or its agents or employees. If coverage is purchased on a “claims made” basis, the Consultant warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “Claim’s Made Basis”. Said policy shall be for services performed, pursuant to this Agreement, either directly or indirectly, which involve or require technology related services.
5. If applicable, Cyber Liability Insurance including but not limited to Network Privacy and Security at a limit of not less than Five Million Dollars ($5,000,000) per occurrence with an aggregate limit of Five Million Dollars ($5,000,000) is required. If coverage is purchased on a “claims made” basis, the Consultant warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “Claim’s Made Basis”.
6. The Consultant shall purchase and maintain business automobile liability insurance, at a limit of not less than One Million Dollars ($1,000,000.00) per occurrence for all damages arising out of bodily injuries or death and property damage. The insurance shall apply to any owned, hired or non-owned automobiles used.
7. For any general liability policy held by the Consultant, the City, its elected/appointed officials, employees, and agents shall be covered, by endorsement, when applicable, as additional insured as respects to liability arising out of work performed by or on behalf of the Consultant in connection with this Agreement.

8. The Consultant’s insurance coverage shall be the primary insurance with respect to the City, its elected/appointed officials, employees and agents. Any insurance and/or self-insurance maintained by the City and its elected/appointed officials, employees and agents, shall not contribute with the Consultant’s insurance or benefit the Consultant in any way.

9. The coverage afforded to the City by the Consultant shall not be suspended, voided, canceled, reduced in coverage, or in limits, or invalidated due to any breach or violation by the named insured of any warranties, declarations or conditions, except for the exclusions in the policy, but this shall not prevent the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days prior written notice has been given to the City. There will be an exception for non-payment of premium, which is ten (10) days’ notice of cancellation.

1. The Consultant shall maintain worker’s compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work under any applicable federal or “other states” state law.
2. The Consultant shall furnish the City a “Certificate of Insurance” with a copy of the additional insured endorsement, when applicable, as verification that the coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.

**F. Term.**

The term of this Agreement shall commence as of **[start date]** until the services are completed as determined by the head of the Department/Agency or his/her designee, but in no case later than **[end date]**, unless terminated earlier in accordance with the terms of this Agreement. The parties acknowledge that this Agreement will be submitted to the Board of Estimates of Baltimore City for ratification after the Effective Date, but shall be binding and effective upon the Effective Date.

**G. Payment.**

Compensation shall be based on a time and expense basis and total compensation paid to the Consultant under this Agreement shall not exceed **[Dollars ($)]** without formally amending this Agreement and increasing the scope of work. The basis of the payment for the Consultant and any subconsultants shall be established in the following manner:

* + - 1. The City shall pay the Consultant monthly, on the basis of invoices accompanied by supporting documents and affidavits as required by the City, but only if the City finds that progress for the month is satisfactory and that during the month, work of sufficient quantity and quality has been accomplished.
      2. For work subcontracted or awarded to others, the Consultant must submit, with its monthly invoice, copies of the subconsultant’s invoices reviewed by the Consultant, as well as certification that it has paid the subconsultant for previously invoiced services for which payment has been received from the City. A report shall be provided to the City disclosing total payments, by dollar amounts and percentages, to each subconsultant up to the date of the current invoice.
      3. All invoices shall be made out to the City and shall be forwarded to the City for review and approval. Payment to the Consultant on each monthly invoice shall be made within thirty (30) days after the City receives an acceptable invoice.
      4. No extra or additional work shall be performed by the Consultant without the prior written authorization of the City. Extra or additional work by the Consultant may be authorized by the City only when a change occurs in scope, magnitude, or complexity of the Project, or for other reasons as stated herein.
      5. Payment of extra or additional work authorized by the City shall be negotiated on the same basis as described above at such time as such extra work is determined to be necessary.

**H. Governing Law.**

The parties agree and understand that this Agreement shall be governed by the laws of the State of Maryland. The Consultant hereby agrees to submit to the jurisdiction of Baltimore City courts with respect to the enforcement of this Agreement.

**I. Local Hiring Law.**

Due to the emergency nature of this procurement, the requirements of Article 5, Subtitle 27 of the Baltimore City Code, as amended (the Local Hiring Law) are not applicable.

**J. MBE/WBE.**

Due to the emergency nature of the procurement, the City waives the MBE/WBE requirements for this Agreement pursuant to Art. 5, § 28-64 of the Baltimore City Code. The Consultant will make every good faith effort to subcontract to minority and women’s business enterprises if subcontracting is utilized.

**K. Commercial Non-Discrimination Policy.**

The Consultant shall comply with the applicable provisions of Art. 5, § 29 et seq. of the Baltimore City Code.

**L. Unfair Labor Practices.**

The Consultant shall comply with the Board of Estimates of Baltimore City Resolution dated June 29, 1994.

**M. Affidavit.**

If applicable, the Consultant shall comply with the affirmations made in the Affidavit attached at **Exhibit 2**.

**N. Truth-In-Negotiation Certification.**

The Consultant by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

1. The wage rates and other factual unit costs supporting the Consultant’s compensation, as set forth in the Proposal, are accurate, complete and current as of the Agreement date;
2. The original price of this Agreement and any additions thereto shall be adjusted to exclude any significant sums where the City determines the price was increased due to inaccurate, incomplete or non-current wage rates and other factual costs.
3. Adjustments to this Agreement shall be made within one year following the end of the Agreement.

**O. Limitation on Liability.**

Notwithstanding any provision to the contrary in this Agreement, the Consultant agrees and understands that any obligation of the City to indemnify or assume liability under any theory of law under this Section and elsewhere in this Agreement is subject to available appropriations and shall be limited to the lesser of: (i) the total cost of this Agreement; or (ii) an amount not greater than the maximum liability of a local government under the Local Government Tort Claims Act, Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article, Annotated Code of Maryland.

**P. Personal Health Information.**

In the event the Consultant has access to personal health information, the parties shall execute the attached Business Associate Agreement intending the effective date thereof to be the effective date of this Agreement, attached hereto as **Exhibit 3** and incorporated herein. Additionally, the Business Associate Agreement is hereby incorporated into this Agreement for the purpose of protecting the personal health information pursuant to this Agreement in compliance with federal, state, and/or local laws, codes, and regulations, now in effect and hereafter adopted.

**Q. Political Contribution Disclosure.**

The Consultant is aware of, and will comply with all applicable provisions of the Maryland Annotated Code, Election Law Article, §14-101 et seq., “Disclosure By Persons Doing Public Business”, (“Election Law”). The Consultant certifies, in accordance with §14-107 of the Election Law, that it has filed the statement required under §14-104(b)(1) of the Election Law.

**R. Miscellaneous.**

1. No Waiver. No failure or delay by the City to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
2. Severability. Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision(s). The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of the Agreement, which shall remain in full force and effect.
3. Notice. Any notice required or permitted under this Agreement shall be in writing and hand delivered with receipt obtained therefore, or mailed, postage prepaid, to the other party by certified mail, return receipt requested to the following:

|  |  |
| --- | --- |
| **FOR CONSULTANT:**  Name  Title  Address  City, State, Zip | **FOR CITY:**  Name  Title  Address  City, State, Zip |

1. Gender. Words of gender used in this Agreement may be construed to include any gender; words in the singular may include the plural of words, and vice versa.
2. Headings. Any heading of the paragraphs in this Agreement is inserted for convenience and reference only, and shall be disregarded in construing and/or interpreting this Agreement.
3. Multiple Copies. Multiple copies of this Agreement may be executed and each such copy shall be deemed an original.
4. Recitals. The recitals are hereby incorporated as part of this Agreement.
5. Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any party may be lawfully entitled.
6. Independent Contractor. The parties agree that notwithstanding any term or provision of this Agreement, the Consultant is and shall remain an independent contractor. As such, nothing herein shall be construed to create a relationship of employer/employee between the City on the one hand, and the Consultant or its subconsultants or their respective employees, on the other hand.
7. Exhibits. All exhibits attached hereto are incorporated within as part of the Agreement.
8. Entire Agreement. This writing contains the complete and integrated Agreement between the parties and may not be modified, altered, amended or surrendered without the written consent and approval of the parties. Other than writings or documents which are specifically incorporated by reference, no oral or written representations are a part of the Agreement.
9. Pre-existing Regulations. Any procurement regulations approved by the Board of Estimates that are in effect on the date of execution of this Agreement are applicable to this Agreement.
10. Funding Source Identification. The funding source for this Agreement is identified in **Exhibit 4**.

**[SIGNATURE PAGE FOLLOWS]**

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

**WITNESS:** **[CONSULTANT’S LEGAL NAME]**

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

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

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

**WITNESS:** **MAYOR AND CITY COUNCIL OF**

**BALTIMORE**

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

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

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

**APPROVED AS TO FORM AND APPROVED BY THE BOARD OF ESTIMATES**

**LEGAL SUFFICIENCY OF BALTIMORE CITY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Chief Solicitor Clerk Date

**EXHIBIT 1**

**[*Consultant’s Proposal or Scope of Work and Quote attached*]**

**EXHIBIT 2**

**[*Affidavit attached, delete if not applicable*]**

**EXHIBIT 2**

**A.** **BID/PROPOSAL AFFIDAVIT**

**1. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the (title) and the duly authorized representative of (business name) and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**2. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, **except** as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

**3. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities including obtaining or performing contracts with public bodies has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, false pretenses, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of the City of Baltimore’s Minority and Women’s and Business Enterprises Law, Baltimore City Code, Article 5, Subtitle 28;

(6) Been convicted of a conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)-(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

(8) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C(1)-(7) above, **except** as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

**4. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business’s contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended, or debarred (including being issued a limited denial of participation) by any public entity, **except** as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person’s involvement in any activity that formed the grounds of the debarment or suspension).

**5. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland and/or Article 5, Subtitle 40, of the Baltimore City Code; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business **except** as follows (you must indicate the reasons why the affirmation cannot be given without qualification):

**6. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

**7. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Disclosure By Persons Doing Public Business, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a municipal corporation or a political subdivision of the State, during a calendar year in which the person receives in the aggregate $100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of $500 made during the reporting period to a candidate for elective office in any primary or general election.

**8. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ) (foreign ) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation.

(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the City of Baltimore and the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, the Department of Labor, Licensing, and Regulation and the City of Baltimore, as applicable.

(3) The business shall remain in full compliance with all requirements of this §8 during the term, and any extensions thereof, of the said contract.

**9. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

**10. CERTIFICATION OF WORK CAPACITY AND PREQUALIFICATION CLASSIFICATIONS**

NOT APPLICABLE.

**11. ACKNOWLEDGEMENT**

I acknowledge that this Affidavit is subject to applicable laws of the United States, the State of Maryland and the City of Baltimore, both criminal and civil, and that nothing in this Affidavit or the contract shall be construed to supersede, amend, modify or waive, on behalf of the City of Baltimore, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland and terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other affidavits comprising part of the contract. I further acknowledge that this Affidavit is a material part of the contract and the business agrees that it shall remain in full compliance with all Affirmations contained herein during the term of the contract and any and all extensions thereto.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWEDGE, INFORMATION, AND BELIEF.**

By:

Name/Title

Subscribed and sworn to me this day of

Notary Public

My commission expires on .

**EXHIBIT 3**

**[*Business Associate Agreement attached, delete if not applicabl*e]**

**EXHIBIT 3**

**\_\_\_\_\_\_\_\_\_\_ Department**

**Business Associate Agreement**

This Business Associate Agreement (the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_ , 2020 by and between the Mayor and City Council of Baltimore, a political subdivision of the State of Maryland, acting by and through its \_\_\_\_\_\_\_\_\_ (the Department) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Provider).

**WHEREAS**, the City and the Provider have entered into a contractual agreement attached to this Agreement awarded by the Board of Estimates of Baltimore City on the effective date specified therein (the “Primary Contract”) under which the Provider may have access to health information protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) (The Provider is referred to as the Consultant in the Primary);

**WHEREAS**, HIPAA requires that a Provider given access to health information protected under HIPAA also enter a Business Associate Agreement;

**NOW THEREFORE,** in consideration of the mutual promises contained herein and for other good and valuable consideration, including the mutual reliance of the parties on compliance with the terms and conditions of this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS**
   1. The terms used in this Agreement (e.g., Individual(s), Report, Required by Law, and Security Incident) have the same meaning as set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, as they may be amended from time to time and as set forth in B. below.
   2. Specific definitions:
      1. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Regulations and which compromises the security or privacy of the PHI (45 C.F.R. § 164.402).
      2. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the PROVIDER.
      3. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the Department.
      4. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160 and 164, as amended from time to time.
      5. "HIPAA Regulations" mean the Privacy, Security, Breach   
         Notification, and Enforcement Regulations at 45 C.F.R. Parts 160 and 164.
      6. “MCMRA” means the Maryland Confidentiality of Medical Records Act, Md. Code Ann., Health-General, §4-301 et seq. as amended from time to time.
      7. Protected Health Information or "PHI" shall generally have the same meaning as the term "protected health information" at 45 C.F.R. § 160.103.
      8. “Secretary” means the Secretary of the Department of Health and Human Services or his designee.
      9. “Unsecured PHI” means PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance.
2. **PERMITTED USES AND DISCLOSURES OF PHI BY PROVIDER**
   1. Provider may only use or disclose PHI as necessary to perform the services set forth in the Primary Contract or as required by law.
   2. Provider agrees to make uses and disclosures and requests for PHI consistent with the Department's policies and procedures regarding minimum necessary use of PHI.
   3. Provider may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Department.
   4. Provider may, if directed to do so in writing by the Department, create a limited data set, as defined at 45 C.F.R. § 164.514(e)(2), for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 C.F.R. § 164.514(e)(2). Provider will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 C.F.R. § 164.514(e)(4), with the limited data set recipient. Provider will report any material breach or violation of the data use agreement to the Department immediately after it becomes aware of any such material breach or violation.
   5. Except as otherwise limited in this Agreement, Provider may disclose PHIfor the proper management and administration, or legal responsibilities of the Provider, provided that disclosures are Required By Law, or Provider obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.
   6. The Provider shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”). This prohibition does not apply to the Department's payment of Provider for its performance pursuant to the Primary Contract.
   7. The Provider shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.
   8. The Provider shall comply with an individual’s request to restrict disclosure of PHI if the information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full as provided in §13405(a)(2) of the HITECH Act.
   9. If the Provider uses or maintains an electronic health record with respect to the PHI of an individual, the Provider shall provide a copy of such information in an electronic format as provided in §13405(e) of the HITECH Act.
3. **DUTIES OF PROVIDER RELATIVE TO PHI**
   1. Provider agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as required by law.
   2. Provider agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
   3. Provider agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
   4. Provider agrees to Report to the Department any use or   
      disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure.
   5. If the use or disclosure amounts to a breach of Unsecured PHI, the Provider shall ensure its report:
      1. is made to the Department without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.E.1, Provider must notify the Department of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Provider has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
      2. includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
      3. is in substantially the same form as the ATTACHMENT hereto; and
      4. includes a draft letter for the Department to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
         1. a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
         2. a description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
         3. any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
         4. A brief description of what the Department and the Provider are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
         5. Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
   6. To the extent permitted by the Primary Contract, Provider may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), Provider shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Provider agree to the same restrictions, conditions, and requirements that apply to the Provider with respect to such information. Provider must enter into Business Associate Agreements with subcontractors as required by HIPAA.
   7. Provider agrees it will make available PHI in a designated record set to the Department, or, as directed by the Department, to an individual, as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format.
   8. Provider agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Department pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.526.
   9. Provider agrees to maintain and make available the information required to provide an accounting of disclosures to the Department or, as directed by the Department, to an individual, as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.528.
   10. To the extent the Provider is to carry out one or more of the Department's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Department in the performance of such obligation(s).
   11. Provider agrees to make its internal practices, books, and records, including PHI, available to the Department and/or the Secretary for purposes of determining compliance with the HIPAA Regulations.
   12. Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of PHI by Provider in violation of the requirements of this Agreement.
4. **TERM AND TERMINATION**
   1. This Agreement shall remain in effect unless otherwise terminated for the entire term of the Primary Contract including any extensions, options or modifications, or, as appropriate, in accordance with the requirements of paragraph (C) of this subsection.
   2. Upon the Department’s knowledge of a material breach by Provider, the Department will either:
      1. Provide an opportunity for the Provider to cure the breach or end the violation and terminate this Agreement if the Provider does not cure the breach or end the violation within the time specified by the Department;
      2. Immediately terminate this Agreement if the Provider has breached a material term of this Agreement and cure is not possible; or
      3. If neither termination nor cure is feasible, report the violation to the Secretary.
   3. Effect of Termination.
      1. Upon termination of this Agreement for any reason, the Provider shall return or, if agreed to by the Department, destroy and document the destruction of all PHI received from the Department, or created or received by the Provider on behalf of the Department that the Provider still maintains in any form. Provider shall retain no copies of the PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of the Provider.
      2. If the Provider believes that returning or destroying the PHI is infeasible, the Provider shall provide to the Department notification of the conditions that make return or destruction infeasible. If the Department agrees that return or destruction of PHI is infeasible, the Provider shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction infeasible, for so long as the Provider maintains the PHI.
      3. Should Provider make an intentional or grossly negligent in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, the Department shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Primary Contract.
   4. The obligations of Provider under this Section shall survivethe termination of this Agreement.
   5. If Provider breaches any of the covenants and assurance in this Agreement, the Department will suffer irreparable harm. Consequently, Provider agrees that the Department may enjoin and restrain Provider from any continued violation of this Agreement, and to reimburse and indemnify the Department for its reasonable attorney’s fees and expenses and costs reasonably incurred as a proximate result of Provider’s breach. These remedies are in addition to and do not supersede any action for damages and/or any other remedy.
   6. This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA Regulations and any other applicable law.
5. **INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**
   1. Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.
6. **NOTICE PROVISIONS** 
   1. Any notice required or permitted under this Agreement shall be in writing and hand delivered with receipt obtained therefore, or mailed, postage pre-paid, to the other parties by certified mail, return receipt requested to the following:

|  |  |
| --- | --- |
| **FOR THE DEPARTMENT:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **FOR THE PROVIDER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. **COMPLIANCE WITH STATE LAW**
   1. The Provider acknowledges that by accepting the PHI from the Department, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Regulations and the MCMRA conflict regarding the degree of protection provided for PHI, the Provider shall comply with the more restrictive protection requirement.
2. **MISCELLANEOUS**
   1. A reference in this Agreement to HIPAA or the HIPAA Regulations or a section of either means HIPAA or the HIPAA Regulations or the section as in effect or as amended from time to time.
   2. The Parties agree to take such action in writing to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA Regulations and HIPAA.
   3. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Regulations.
   4. The parties agree that this Agreement shall not be assignable, except by written approval, in advance by the Department.
   5. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, exclusive of its conflict of law rules. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be filed in a court of competent jurisdiction in Baltimore City.
   6. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this agreement shall survive termination or expiration of this Agreement and continue in full force and effect.
   7. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
   8. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
   9. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.
   10. This Agreement constitutes the entire, full and final understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein.
   11. Should any conflict exist between the language of this Agreement and the Primary Contract, the language of this Agreement shall prevail unless at some time in the future the parties specifically refer to this Agreement and explicitly otherwise provide.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the parties hereby evidence their agreement to the above terms and conditions by having caused this Agreement to be executed and delivered the day and year first above written.

**ATTEST MAYOR AND CITY COUNCIL OF BALTIMORE**

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

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

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

**WITNESS PROVIDER’S LEGAL NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Seal) Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**ATTACHMENT TO BAA**

**FORM OF NOTIFICATION TO THE DEPARTMENT**

**OF BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.E.(3) of the Business Associate Agreement between the Mayor and City Council of Baltimore, a political subdivision of the State of Maryland, acting by and through its Baltimore City Health Department (Department) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Provider).

Provider hereby notifies Department that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Provider has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Date of the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_Date of discovery of the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Number of individuals affected by the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Names of individuals affected by the breach: (attach list)

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

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

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

Description of what Provider is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

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

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

Contact information to ask questions or learn additional information:

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

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

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

**EXHIBIT 4**

**[*Funding Source Identification attached*]**

**EXHIBIT 4**

**FUNDING SOURCE IDENTIFICATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **Source of Funding:** | **Federal** | **State** | **City** |
| **Name of Awarding Agency:** |  |  |  |
| **Award Title:** |  |  |  |
| **Award Id. #:** |  |  |  |
| **CFDA Id. #:** |  |  |  |
| **Term of Award:** |  |  |  |
| **Award Amount:** |  |  |  |
| **City Account #:** |  |  |  |

1. The Consultant acknowledges that the funding of this Agreement is from federal, state, and/or City funds. The identification of the source of funding is indicated above. As applicable, the Consultant shall comply with the requirements of the funding source, including but not limited to the terms and conditions of the notice of grant award, statutes and regulations, and manuals.

2. As applicable, the Consultant shall comply with the assurances and certifications, which are attached hereto and incorporated herein.

3. The Consultant agrees to accept any additional conditions governing the use of funds or performance of programs as may be required by executive order, federal, state or local statute, ordinance, rule or regulation or by policy announced by the City. However, should the Consultant find such additional condition or conditions unacceptable, the Consultant may terminate this Agreement upon thirty (30) days written notice.